University of Alberta

20th Century Women: Redefining Equality, Justice and Freedom

by

Marie Jean Laing ©

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in
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DEDICATION

To my beloved grandchildren, Katelynn and Bennjamin, our hope and faith in the future.

MEMORIUM

In loving memory of my granddaughter, Sarra Marie, you will live in our hearts and through our deeds.

ABSTRACT

This work delineates twentieth century Canadian women's struggles for recognition of their political and social claims as citizens and as persons. Three case studies highlight different aspects of their struggle against a patriarchal and paternalistic heritage and hegemony. These case studies demonstrate that all women may have their claims, as citizens and as persons, denied due to the marginalization of women and the consequent silencing or invisibility of their experiences, interests and aspirations.

The first cast study focuses on the struggle of one of Canada's most marginalized of women, a young, pregnant, aboriginal woman living in conditions of violence and poverty, and suffering addiction to glue, against the state, which would have incarcerated her in a treatment centre and, thereby, deprived of her citizenship rights as guaranteed by the Charter of Rights and Freedoms. The second case study, which focuses on issues raised in presentations to a Senate-Commons Special Joint Committee on Custody and Access, demonstrates that all women are at risk of having their interests and relationships of care rendered inconsequential or invisible by patriarchal institutions and discourse. In the final case study the lives of three women, who overcame internal and external barriers to seek high political office, are examined. The philosophical, political and social context of each case is presented and examined to explicate the varied forces that maintain the patriarchal order including its religious, scientific, educational, and political institutions. In the conclusion, the human construction of society, of social reality and "truth," and of individual consciousness is examined and recommendations are made to alter and transform present human constructions and institutions to include women's experiences,

interests and aspirations in the definition of the human condition and the nature of equality, and in the determination of justice.

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CHAPTER I

INTRODUCTION

> …not enough attention has been paid … to its (the second wave of feminism) significance as an intellectual paradigm.
>
> (Susan Boro, 1993, p.17)

The twentieth century has borne witness to many struggles against marginalization and oppression, including struggles against imperialism and racism and against patriarchy and sexism. The struggle against imperialistic colonization revealed linkages between political, economic and social factors, and personal belief systems in the structures and practices of the dominant "public" economic, political and primarily male domain of societal life (Freire, 1970; Memmi, 1991). The first wave of feminism struggled for women's enfranchisement. However, the second wave of feminism further elaborated on the linkages within the "public domain" and articulated the reciprocal interconnection between the public domain and the historically marginalized, private, subordinate and primarily female, domain (Arneil, 1999). The separation of the "public" from the "private" or personal domains of human activity made invisible the interests, claims and relationships of the "private" domain (Boling, 1996). It was a separation that served the interests and needs of the "public" domain and only if activities in the "private" domain threatened the stability and interest of the "public" domain were they subject to scrutiny and correction in accordance with the needs of the market place and dominant societal beliefs and values (Arneil, 1999).

Feminists challenged the dualistic construction of "private-public" divide and held that the personal is political and that "there is no private domain … of a person's life that is not political and there is no political issue that is not ultimately personal" (Bunch, cited in Boro, 1993, p. 17).

Nevertheless, the historical relationships of power and control, of domination and subordination, and of superiority and inferiority have been embedded in society's symbol systems, including language, religion and science, and embodied in societal structures and institutions including the "public-private" division, in the definition of what is good and just, and in the determination of justice. The dominant belief systems and practices are held by their adherents to be immutable and moral and are transmitted to succeeding generations through the processes of enculturation and education, and supported by philosophical and scientific discourses and practices (Arneil, 1999). Thus, the political and sociological becomes psychological (Vygotsky, 1962) as human consciousness is given birth. The dominant structural belief and value systems are internalized by both the oppressor and the oppressed, such that there are no clear distinctions between the consciousness of the oppressor and the oppressed, or, in this instance, between that of men and of women (Memmi, 1991). Instead, there is a complex set of existent relationships between and within groups that nevertheless hold the experiences, aspirations and values of the oppressed or subordinate group in silence, without name, or, if named, without legitimacy (Christ, 1980). Thus the political becomes personal in the most profound sense, at the level of the human psyche. In a patriarchal society, women's experiences and aspirations have been unspoken, even to themselves.

> Men's domination is built into our language, laws and customs in both formal and informal ways. The domination is accepted because it has been internalized and is often portrayed as … authoritative, or mutually beneficial. (emphasis added) (Benokraitis, 1997, p. 23)

In the 1960s, philosophical interest started to focus on "discourse" and discourse analysis (Mills, 1997). As Mills (1997) notes, "A discourse is a set of sanctioned statements which have some institutionalized force, which means they have a profound influence on the way individuals think and act" (p.62). Fairclough (cited in Mills,1997) states that in critical linguistics, discourse is used to "refer to the different ways of structuring knowledge and social practice …. Discourses do not just reflect or represent social entities and relations; they constitute them" (p. 149). Furthermore, discourse analysis shows "… how discourse is shaped by relations of power and ideologies, and the constructive effects discourse has upon social entities, social relations and systems of knowledge and belief, neither of which is normally apparent to discourse participants" (p. 150). In this way, discourse theory provides an understanding of hegemony - that is, people's complicity in their own oppression, without holding that individuals are passive victims of thought (Mills, 1997) and, indeed, such analysis may demonstrate how differing "texts" may challenge, alter and transform discourses.

Thus, the very symbol systems, language and the processes of discourse and education/enculturation, that impose meaning on the world of human experience and create a human "reality," free the human heart and mind to interrogate those structures and meanings in the context of the "lived-world" and allow individuals and collectivities to imagine a future "reality" different from the present and to transform society's institutions, beliefs, meanings and symbols.

In the twentieth century, the values, beliefs and institutions that are implicit in colonial oppression and racism and in patriarchal sexism have been increasingly named, challenged and denied legitimacy. Early writers of the colonial experience named the oppression of men but did not delineate the differential impact on women, of colonization, which was grounded in the sexist and patriarchal societies of the colonizers (Memmi, 1991). Early writers of women's experiences in Western patriarchal and sexist society failed to address the differential impact of these structures (patriarchal) and beliefs (sexist) on women as they related to difference in race, class and ability (Arneil, 1999; Bannerji, 1991; Goetz, 1991; Lorde, 1992). However, since the 1980s, there have been increasing numbers of publications which seek to integrate "issues of race, ethnicity and nationality into feminist theory" (Marshall, 1994, p. 87). Although the literature and discourse of colonization elaborate the processes of oppression and marginalization of distinct national or racial groups and as such, can extend feminist analysis of the oppression of women in patriarchal states (Marshall, 1994), I would hold that the oppression of women is more deeply embedded historically and symbolically and is therefore more profoundly psychological. The struggles against the political structures of colonial imperialism have, for the most part, ended; however, the struggle against patriarchal sexism and its differential impact on individual women depending on their status and on groups of women of differing identities continues with limited success, as the case studies to be presented demonstrate.

The processes of liberation and emancipation are consistent throughout colonial and feminist literature. Freire (1970), writing from the colonial perspective, elaborated in the process of "conscientizacao" as to "learn to perceive the social, political and economic contradictions and to take action against the oppressive elements of reality"(p. 19). He states there is a need for "…a pedagogy (which) makes oppression and its causes objects of reflection by the oppressed…," and holds that "…from that reflection will come their necessary engagement in the struggle for their liberation" (p. 33). Feminists in the 1970s called for consciousness raising groups to address and name women's experiences and reality and to set their own agenda for change. "By encouraging women to speak about what were apparently 'personal' problems, and by discovering the common character of these experiences, the consciousness raising played a key role in exposing institutionalized, entrenched oppression of women" (Adamson, Briskin, & McPhail, 1988, p . 204).

However, beyond challenging "what" is known, an elaboration of the processes and goals of "knowing" is necessary. Philosophy and science are, after all, societal in origin and reflect the "subjectivity" of the dominant sector of a society/culture at a particular time in history (Vygotsky, 1978). In addition, Kuhn (1962) held that changing paradigms of science shape what and how scientists "see" to create gestalts of "meaning" consistent with what is "known" in a particular scientific community. By noting anomalies or inconsistencies with current theories or including a different (broader or narrower) range of data, scientists move beyond a given paradigm to create different gestalts of "meaning" such that "when the transition is complete, the profession will have changed its view of the field, it methods and its goals" (p. 85).

Benjamin (1988) challenges the masculine character of modern science including its commitment to separation and instrumental rationality: "… a science that has been premised on a radical dichotomy between subject and object" (Keller cited in Benjamin 1988, p. 190) and on conquest and domination made explicit in the metaphor of "subduing nature and wrestling her secrets from her" (Benjamin, 1988, p. 189). "Intersubjectivity," or the ability to see the "aliveness" of the others and in which "the act of knowing can be felt as communion, not conquest" (McClintoch, cited in Benjamin, 1988, p. 192) is missing. Arneil (1999) holds that human science is not "… an objective school of thought … (but) another forum for politics" (p. 109) and cites Phelan who states:

> In its search for facts that are not tainted by subjectivity, positivism must deny that language shapes perception, that theory forms observation. This inability to acknowledge one's own position has left the positivist researcher, reporter, clinician open to the charge of willful blindness and participation in the status quo….(p. 109)

According to feminists, in a patriarchal science, women's development, experiences and needs have been marginalized and "scientific" scrutiny has, until the 1980s and 1990s, focussed on "man as the measure of all things." Walker, cited in Held (1995), states that "Philosophical ethics, as a cultural product, has been until recently almost entirely a product of some men's thinking" (emphasis added) and she calls for an "alternative moral epistemology" (pp. 139-140). Gilligan (1982) offered such a "moral epistemology" founded in women's relationships of care in the "private" domain that stands in contrast to the "logic of justice" founded in the individualistic and empiricist science of the "public" domain.

For women (and men) to become fully human, the structures of oppression and patriarchal sexism must be challenged as they apply to how we understand ourselves as men and as women, what is just and what is justice, and how we shall share the benefits and burdens in a political society. The case studies presented in later chapters demonstrate women's struggle for emancipation and freedom. It is a struggle that is both psychological and political because the forces that deny freedom are also both psychological and political.

The Psychology of Oppression and Patriarchy

The three case studies of contemporary women's political struggles that constitute the body of this work explicate the dynamics of social and psychological mechanisms of a patriarchal society. The exclusion of women by patriarchal society has been at two levels; namely at the political as women are denied participation in the "public" and political domain of societal life, because they are deemed unfit for "public" life but are naturally suited for nurturing in the "private" domain; and at the philosophical/psychological levels in which the dominant understanding or view of human nature and human relationships is based on men's experiences and activities.

The explanations for the development of patriarchal social relationships and the resulting psychology are unknown. Differing philosophies have provided differing explanations which will not be addressed here. Certainly, the exclusion of women from political "public" life dates back to the time of Plato, who, in earlier writings of the Republic and Symposium acknowledged the same essential nature of men and women; nevertheless, in the Laws he stated " … woman – left without chastening restraint – is not, as you might fancy, merely half the problem; nay she is two fold and more than a two fold problem, in proportion as her native disposition is inferior to man's" (Plato cited in Dickason, 1976, p. 50). Grant (1991) theorizes that the Athenian State represented the transition from societies based on kinship to the dominance of "patriarchal units" like the family, and, by extension, to patriarchal states, which subordinated the labour of women, relegated women to the private sphere of home and family, and created gender roles based not on "natural propensities" but on (male) social and political necessities.

Women were held to be the property of men (Clark & Lewis, 1977). Prior to marriage, women were subject to the will of their fathers or brothers/uncles. Upon marriage, this "ownership" and control was given over to the husband as were women's properties, including those acquired though inheritance, and the children of the marriage.

Through the institution of marriage, women were to give their will (and bodies) over to their husbands and the "two" were to become as "one." Rape was conceptualized as a crime against male property. An unmarried woman who was raped was considered "damaged" and less valuable in terms of "bride price" (Brownmiller, 1975; Clark & Lewis, 1977). A rapist could avoid the charge of "rape" by "purchasing" his victim and marrying her. Rules of law held that a man could not be deemed to have raped his wife (Clark & Lewis, 1977). In some cultures a married woman, who was raped by anyone other than her husband, could be charged with adultery and would suffer the consequences of adulterous behaviour (Brownmiller, 1975; Clark & Lewis, 1977). Men were responsible for controlling their wives and were instructed they could, and in some cases "should," beat their wives with a stick provided it was not bigger than their thumb (thus the "rule of thumb") (Dutton, 1995).

The witch hunts and burnings of the thirteenth to sixteenth centuries were the most extreme punishment for women who did not know their "place" but who, instead, spoke publicly and healed others (Jamieson, 1995). Thus, gender roles institutionalized the subordinate and "private" position of women and were created and recreated within given patriarchal societies and imposed on more equalitarian societies as they were colonized. In the case of Canadian aboriginal peoples, egalitarian social structures were replaced by patriarchal structures (Arneil, 1999). European colonists and religious leaders saw aboriginal women's powerful status as an impediment to introducing Christianity and patriarchal rule (Pierre-Aggamaway, 1983; Robertson, 1970; Weaver, 1993). They reorganized aboriginal family and social structures, negotiated treaties and trading relationships with male "chiefs" and banned traditional religious rituals, ceremonies, and practices (Day, 1991; Pierre-Aggamaway, 1983). Aboriginal children, forced into residential schools, were forbidden to speak their "mother" tongue and were subject to the indoctrination into Christianity (Robertson, 1970; Silman, 1987). In addition, many children were apprehended by the state and placed in white adoptive homes (Hamilton & Sinclair, 1991).

In the present time, in the Third World, women-centered economic systems are being replaced by neo-conservative, neo-liberal, male-centered technological and cash crop economies which undermine and/or destroy women's self sufficiency as well as their social safety nets (Chowdhury, Nelson, Carver, Johnson, & O'Loughlin, 1994).

Because of women's marginalization into the private domain, they have been (and are) removed from recorded history, which is the history of public domain activities, and thus women "know" only men's history. They are denied language that expresses their lives in the private domain, that is the language of emotions and relationships, a language which lacks "legitimacy" in the male "culture." They may lack the language to name and reflect upon their own experience (Christ, 1980; Spender, 1980). Women have seen their religion and expertise banished, and all that in philosophy, music and art, reflects and represents their being and experience from the perspective of women's subjectivity and practice has been silenced (Arneil, 1999; Christ, 1980; Kaschak, 1992; Mitchinson, 1993).

Patriarchal biases and values become embedded and encoded in language and discourse, in social/political institutions, and in the "rational" and objective way of thinking, knowing and doing (Arneil, 1999).

Thus the meaning of a woman's life was imposed on her, her knowledge and "meaning" cast out, but in a context of male ambivalence, ambiguity, and even antipathy towards women. Grant (1991) notes that " … the division of women from political life gave rise to the idea that women were symbols of virtue and human qualities which men could not match …. women were the 'beautiful souls' who personified the highest ideals of the state" (p. 14). At the same time, woman represented nature with her capriciousness and "mysterious powers" to bring forth life, and like nature, needed to be "conquered" and subject to male domination (Arneil 1999; Dutton, 1995). Jamieson (1995) suggests that women are kept in "their place" that is, in the private domain, through a process of double binding such that if a woman speaks out she is punished, or conversely, held to have nothing to say or no interest in speaking, if she remains silent. Similarly, "women who are considered feminine will be judged incompetent, and women who are competent, unfeminine"(p. 17). Thus, the public-private division renders women's activity, behaviour and experiences in the private domain invisible and not subject to public scrutiny unless women fail in their "duty to care" for child(ren) and family (Levine, 1983; Ward, 1984).

Particularly noteworthy is the marginalization and silencing of women's experience of oppression and violence within the home or private domain (Boling, 1996). It included, until the 1990s, women's "private" suffering in times of colonization and war, including rape and starvation, which has also been unacknowledged by the dominant culture (Brownmiller, 1975). Until the 1970s and 1980s, the tension, oppression and violence against women and children in the home were not subject to public scrutiny because to scrutinize such behaviour was held to violate a man's "privacy," his "private domain" of respite and care. In contrast, women's "private" work of child bearing and rearing has been subject to increasing scrutiny by the state even though their subjective experience is held in silence or denied legitimacy. Indeed, the meaning of women's experience is often imposed and embodies the patriarchal construction of "woman." Thus, if children are not "properly mothered," experience difficulties, or turn out "bad," mothers are held as primarily responsible. They are judged as inadequate, neglectful or "unfit" (Levine, 1983). They may be characterized as self-serving and manipulative, or as "smothering" and self-sacrificing through a negative form of martyrdom. However, if a woman is unable to protect and/or care for herself and her child(ren) or fails to embrace a self-sacrificing "duty to care," she is also judged as "bad" and deserving of punishment including the apprehension of her child(ren), and of correction through incarceration in treatment/correctional facilities (Armstrong, 1983; Boling, 1996; Mason, 1994; Ward, 1984). Her suffering and anguish, her struggles, and her values and aspirations remain unspoken, or if spoken, unheard. Attempts may be made to limit women's constitutional rights to "autonomy" and "security of person." Particularly problematic for women are issues of reproductive choice and health and "lifestyle choices" during pregnancy (Boling, 1996; Brodie, Gavigan & Jenson, 1992). Because the embodied experience of pregnancy and child bearing are unique to women, their experiences as women are unknown, and, perhaps, unknowable to men.

Because women were considered "weaker" or inferior, (physically and morally) men had to deny and became alienated from those "female" tendencies in themselves and thereby, from their full human nature or humanity (Benjamin, 1988). Men, who denied their dependency on women for their (emotional) well being, were nevertheless burdened with caring for these "beautiful souls," and protecting them (and society and men) from their own (women's) folly (Arneil, 1999). Therefore, a man's position of privilege and power was (is) existentially both just and a burden (Mason, 1994). Similarly, a woman may reject "masculine" tendencies in herself to overcome the cognitive dissonance between what she "should" be and what she "could" be (Jamieson, 1995). Through this process, she too becomes alienated from her essential humanity and her worthiness as a woman and from other women, particularly those women (and men) who challenge the dominant view of what gender relations "should be" (Jamieson, 1995). Through the psychological process of reaction formation and identification, she aligns herself with patriarchy and with the ideology of male superiority and privilege. For the woman who accepts patriarchal gender relationships, her position of relative inferiority and powerlessness is more likely to be experienced as reflecting her "rightful" place and her "duty" (Jamieson, 1995).

In conclusion, the underlying motivation for a man in the patriarchal order may include the need to maintain power and privilege for himself, to maintain the status quo and the natural order in society and the universe (as he sees it) and to avoid economic and spiritual challenge. For the woman, security and survival for herself and her children may be the primary motivational forces, but they may include a need to maintain the status quo and her "rightful" place.

All Canadian women are subject to this patriarchal "heritage". Aboriginal women suffer the additional burdens of colonization while women of differing categories of advantage or disadvantage are also subject to the differential impact of patriarchal prerogatives on their lives. The case studies that constitute this thesis demonstrate that any Canadian woman, including the most "privileged" of women, may have her claims and rights undermined by a patriarchal "consciousness" that holds women as inferior or deficient and that makes invisible or inconsequential their relationships and experiences.

The Case Studies

These case studies are presented to demonstrate how the forces of oppression and patriarchy, implicit in the "public-private" domain dichotomy and internalized into the psychic structures of both men and women, impacts on Canadian women, and how patriarchal consciousness and structures have been (and must be) challenged.

The first case, DFG v. CFS: Holding Back the Darkness examines a recent case heard by the Supreme Court of Canada. The case before the Court involved a young, pregnant aboriginal woman (DFG) who was detained by Winnipeg Child and Family Services (CFS) in a Winnipeg treatment centre, ostensibly for the purposes of protecting the fetus she was carrying from her glue sniffing behaviour. The case study highlights the processes of colonialism and racism, classism, and sexism and their impact on DFG's citizenship claims for autonomy and security of person as guaranteed by the Canadian Charter of Rights and Freedoms. The case study explores how modern political (neo-liberalism/neo-conservatism) and scientific (individualistic, objective empiricist) practices decontextualized DFG's life, situated as it was in conditions of poverty, violence, and marginalization and rendered, as invisible, the interconnectedness between DFG and the fetus she was carrying. The case was constructed by CFS and much of the media as one of rights in which the rights of the fetus to care and protection were seen as competing with the rights of the mother to self determination. This right to self determination, it was held, had resulted in her failure to exercise a "duty to care" for the fetus. DFG vs. CFS demonstrates the fragility of women's citizenship claims in a sexist and racist society and outlines the need for feminist involvement in every societal endeavour including politics, scientific research and theorizing, social practice, and the determination of what is just.

The second case study, For the Sake of Children: Preventing Reckless New Laws, demonstrates how any woman, regardless of status (class, race, ethnic origin, ability, sexual orientation), may face challenges and marginalization of her interests and the interests of her children. The Proceedings of the Special Joint Senate-House of Commons Hearings on Child Custody and Access (1998) and the three resulting majority and minority reports were reviewed and are the subject matter of this case study. Claims made by fathers' rights activists/lobbyists and by women- and child-centered presenters are outlined. The Hearings, forced by the fathers' rights lobby, were dominated by submissions which held that the law, as written, practiced and implemented, was deeply biased against fathers (men) and resulted in great harm to children. Charges and images of societal complicity on women's vindictiveness and duplicity were invoked. Women- and child-centered presenters focussed on their concern about the need to protect women and children from ongoing paternal violence, abuse and harassment. The Hearings were deeply emotional and divisive. On the one hand heart rending accounts of men's suffering were received with sympathy. On the other hand, presenters outlining the reality and impact of male violence were met with hostility and challenge.

The second part of this case study summarizes the law, as written, and reviews the research into the law as practised (custody-access outcomes), as well as research into parental behaviour in regard to exercising custodial and access arrangements. The literature on violence and allegations of violence is also reviewed.

The results of the research review indicate that fathers' rights activists have constructed a rhetoric of victimization and loss that is inconsistent with research evidence. Nevertheless, fathers' rights claims resonate with the images, beliefs and values internalized by both men and women in a patriarchal society. At the same time, women's claims as mothers and victims of male violence are held to be suspect. Women's embodied experiences of birthing and nurturing children are rendered invisible, inconsequential or less important than paternal relationships and claims. This case demonstrates the vulnerability of women and children to patriarchy's paternal prerogative and to a construction of justice founded in the public domain. It points to the need to make visible the relationships of care that characterize the private domain and to construct a justice that can account for those relationships of care.

The third case study, In Search of Equality and Justice: Three Political Women, examines the early influences in the lives of three "political" women who, differing in class, race, and generational backgrounds, challenged traditional gender roles and the marginalization of women and their interests. Rosemary Brown, Audrey McLaughlin, and Kim Campbell each sought the leadership of a federal party, and the possibility of being Prime Minister of Canada. In so doing, each struggled against external institutional and internalized psychological barriers in order to give "public" voice to women's experiences and citizenship claims. Their stories reveal the many facets of patriarchal sexism. In addition, Brown's story reveals the impact of sexism compounded by racism on a Black woman. Thus, their stories demonstrate the ways, both subtle and explicit, that women are marginalized and held in silence. Their stories also provide direction as to the changes necessary in processes of education and enculturation and social and political institutions, including science and ethics, if women are to achieve representation and recognition of their psychological and citizenship claims grounded in psychology and politics which includes women as equal in their humanity.

Conclusion

In conclusion, this work names, elaborates and challenges the socially constructed "reality" implicit in a patriarchal society. The tenets of patriarchy, which shape our understanding, are encoded in societal symbolic systems (language, religion), and social institutions are internalized into individual consciousness and the collective unconscious, through the processes of education and enculturation. Thus the tenets of patriarchy become profoundly psychological and shape the perception of "reality" and the creation of meaning. As part of a patriarchal society, women are often without voice and their experiences are held in silence. The case studies presented demonstrate how the "conscious" and "unconscious" forces that maintain patriarchy limit women's possibilities and deny them their full humanity. Inclusion of women in all aspects of society, including the construction of meaning, would give rise to a changed view of human "nature," to an enhanced epistemology and science, and to justice founded in an ethic of care as informing the balancing of rights and responsibilities. As this changed construction of "reality" comes into language, it will transform political and social structures and behaviour such that women's reality will be articulated and included in the definition of humanity, how we know the world and the way we determine what is just and good.

Chapter I, Introduction, draws on the psychology of L. Vygotsky (1962) and colonization and feminist theorizing to explain the internalization and transformation of the societal and political into the psychological structures of the mental and the social life of individuals in a given society. The dynamic interaction of psychological and political forces, that give rise to and maintain the oppression of women in patriarchal society, is elaborated.

Chapter II, DFG vs. CFS: Holding Back the Darkness, presents the case of a young woman's oppression and silencing by a sexist, racist and classist state. She is the most vulnerable and silenced of women as the multiple forces of oppression intersect and challenge her fundamental rights as a citizen and as a human being. She has internalized the oppressor's view of herself and her opposition is silenced. This chapter is complete and has been submitted to the Canadian Journal of Women and the Law for publication.

Chapter III, For the Sake of Children: Preventing Reckless New Laws presents a study of the fathers' rights movement. This study elaborates on the social construction of motherhood and fatherhood. It demonstrates that women also internalize the tenets of patriarchy and that all women can be subject to attack to maintain historical power and privilege. The struggle is not between men and women, but between men and women who align themselves with patriarchal beliefs and structures and women and men who challenge the marginalization of women's interests. This chapter is complete and has been accepted for publication by the Canadian Journal of Family Law 16(2)(in press).

Chapter IV, In Search of Equality and Justice: Three Political Women, is the study of the autobiographies of three Canadian women who sought and achieved political office. Influences in their lives that led to their feminist and political activism are explored. The author calls for an ontology that includes woman in its definition of "human," an epistemology and psychology that includes the study of women and their relationships, and a social ethic that includes relationships of care in the definition of justice. Implications for the education of boys and girls, and of men and women, are outlined. This article has been published in AGATE: Journal of the Gifted and Talented Educational Counsel of the Alberta Teachers Association 11(2) 2-11.

The final chapter revisits the themes of the first chapter and proposes a human ontology that includes female as well as male development, historical activity and commitments, an epistemology that overcomes the empiricist scientific method of separation, and an ethic of justice that sees beyond individualism and competition to interconnectedness and cooperation. Implications for psychological theorizing and educational practice are presented.

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CHAPTER II

CFS v. DFG: HOLDING BACK THE DARKNESS *

> We have to dare to imagine how we would reconstruct the foundation of this country on the basis of a solid recognition that women matter.
>
> Annalise Acorn, 1991
> (Conversations Among Friends - Entre Amies)

> ... in a society that takes its obligation to treat addictions seriously, the problem of incarcerating pregnant women would never arise.
>
> Rebecca Murdock
> (Herizons, Spring, 1998)

Introduction

In the context of advancing medical research and technological interventions into neo-natal development, issues of abortion, fetal rights, and the personhood of the unborn are being constructed as scientific as well as legal and moral concerns. These concerns are founded in an empirical and abstractive demonstration of the "reality" of the fetus and fetal development independent of the mother. Such inquiry and discourse renders the mother, as mother, "invisible."

The resulting individualistic construction of the fetus as separate from the mother lays the foundation for a neo-liberal discourse of competing rights and a neo-conservative

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* A version of this chapter has been submitted for publication. Laing (1999). Canadian Journal of Women and the Law.

discourse of protecting the innocent "unborn" from the "wrong-doing" mother. The mother and fetus become abstract and objectified entities such that the inter-connectedness between the interests and well-being of the mother and of the fetus is not recognized, named, or subject to scrutiny. In addition, the mother's life is decontextualized so that the context of co-existing and mediating personal variables and social conditions that impact on the well being of both the mother and the fetus are not addressed in scientific research and literature or in the political discourse when remedies are sought. The "reality" thus constructed becomes the focus for political and public debate, and for medical practice and legal decision and law making.

This paper is a case study of a recent case heard by the Supreme Court of Canada involving a pregnant aboriginal woman, who was detained in a Winnipeg treatment centre, ostensibly for the purposes of protecting the fetus she carried from the effects of her behaviour (glue sniffing). The action by child protection services was in response to the emerging scientific and medical evidence "demonstrating" the impact of substance use/abuse by the mother on the developing fetus and the recently constructed medical condition, Fetal Alcohol Syndrome (FAS). Social service agencies, the medical establishment and politicians seek ways of reducing the incidence of FAS, which has been termed the major cause of "preventable" mental disability.

This case highlights the intersection of colonialism, racism, classism and sexism in determining whose personal and private behaviour will be subject to public scrutiny and which citizens will be subject to coercive state intervention. It also speaks to the tension in Canadian jurisprudence in regard to the rights accorded to women by the Charter of Rights and Freedoms (Charter)and, thus, the fragility of those rights.

Increasingly social service agencies, medical practitioners and the courts have been challenging women's right to "security of person" when the well being of the fetus is deemed to be at risk and in some instances the courts suggest the pregnant woman has a unique duty "to care". These challenges pose a threat to women's hard won right to reproductive choice and freedom, including abortion rights, and suggest that pregnancy necessarily compromises a woman's moral integrity, and her constitutional rights and freedoms as guaranteed by the Charter.

This case study will document and analyze the actions by the many actors involved, and demonstrate the necessity for feminist analysis and action if women's full citizenship is to be achieved and is to endure.

The Case: CFS v DFG

In 1996, a pregnant aboriginal woman, DFG, was ordered confined against her will in an addictions treatment centre. She was the mother of three children, two of whom reportedly suffered fetal alcohol syndrome (FAS) as a result of her glue sniffing behaviour. The order was made by Manitoba Court of Queens Bench Justice Schulman. The carriers of the action, Winnipeg Child and Family Services (CFS), held they had parens patriae jurisdiction over the unborn child. In addition, the order for detention was founded in the Manitoba Mental Health Act provision of incompetency arising from a mental disorder. Two days later, the order was stayed by a justice of the Manitoba Court of Appeal and the full Court of Appeal upheld the stay. CFS appealed the stay to the Supreme Court of Canada. A decision rendered on October 31, 1997, held in the majority decision that the rights of the mother and her unborn child are indivisible and the appeal was dismissed. The dissenting justices held that the state should have parens patriae jurisdiction to protect the unborn fetus.

Historical and Structural Context

The case of CFS v DFG is at the intersection of patriarchal colonialism, racism, sexism and classism. It is also at the intersection of federal and provincial jurisdictional struggles and aboriginal structures and interests. This case demonstrates the complex relationships that exist in this country in terms of governance and provision of citizenship rights.

It reflects the influences of a history that is more than two hundred years in duration. The white colonizers negotiated treaties with the aboriginal residents of Canada in the name of the Crown. The enactment of the property provisions of the treaties and the exercising of the rights granted by the treaties continue to be in question today in regard to land disputes and property rights through the courts and in regard to the provision of services through provincial/community agencies.

Of particular significance to this case is the Indian Act of 1876 which robbed aboriginal women who married non-aboriginal men of their "Indian" status, property and entitlements. This action served the interests of aboriginal men by retaining power and property in their hands. It further served the interests of the white colonizers by excluding women, the teachers and carriers of culture, thus furthering the interests of marginalization of aboriginal peoples, and the goals of assimilation and what some have called "cultural genocide." The Indian Act maintained or established a patriarchal power structure in aboriginal society and created tension/conflict between aboriginal men and women. Aboriginal women's marginalization and inequality were institutionalized. In 1985, Bill C-31, which reinstated their aboriginal status and rights, came into law and was the result of the long national and international struggle by aboriginal women (Silman, 1987). Aboriginal women were opposed by aboriginal men who had the "ear" of the governments and courts of the day. Opposition and silencing of aboriginal women by aboriginal men continues to this time. Bill C-47, an earlier attempt to reinstate aboriginal women, was defeated in the Senate and aboriginal senator, Charlie Watt, was one of the senators who voted against Bill C-47 (Silman, 1987, p. 20). The late Senator Walter Twinn, an aboriginal man, was also an outspoken opponent of Bill C-31 and vigorously opposed reinstatement of non-status women. Aboriginal women's voices continue to be marginalized and/or silenced in relation to social rights. Barbara Nepinah of the

Indigenous Women's Collective of Thompson, Manitoba told the Royal Commission on Aboriginal Peoples Exploring the Options, (1993): "... Aboriginal women were being intimidated from speaking at public hearings in order to keep physical, emotional and sexual abuse hidden ..., women and children did not have power in their communities, and ... some women had been fired or denied welfare because of their political activities. By keeping women ignorant ... chiefs could maintain control"(p. 10). Aboriginal and Metis women, speaking at a conference on the Constitution, called for recognition of aboriginal women's voices. Friedel (1991) notes that although "The Government of Canada has recognized the right of women to full participation in the constitutional process ... Of the amount (of money) allocated to Metis people ... ten percent was allocated to Metis women - it has been estimated that the female Metis population compared to male population was slightly higher (56%)" (p. 91). Day (1991) held "... accompanying self-government for Aboriginal Peoples must be effective guarantees of equality for Aboriginal women. Otherwise Aboriginal women indicate that they will be merely exchanging domination by white men for domination by Aboriginal men" (p. 98).

Thus the federal government, which has ultimate responsibility for aboriginal peoples, creates and, with the aid of aboriginal men, recreates and maintains patriarchal sexist power structures. The federal government has legislative power with respect to aboriginal peoples and provincial governments share responsibilities for the provision of services to meet the "distinctive needs of its citizens." Federal Royal Commissions and provincial task forces have provided a wide range of reports (too numerous to name) in an attempt to deal with the "Indian" problem. A Recent Royal Commission report (Royal Commission on Aboriginal peoples: Aboriginal Peoples in Urban Centres) states that the federal government takes responsibility for Inuit (since 1939) and Indians on reserves and provinces and municipalities are responsible, for the most part (with the exception of some health care and education services), for Indians not residing on reserves and for Metis peoples. Particularly hard hit by this division of responsibility are aboriginal peoples in urban centres as governments (federal, provincial and municipal) try to shift and evade responsibility for services. Instead, aboriginal and Metis people must rely on mainstream services that do not meet, or are insensitive to, their unique needs. Thus treatment services may be ineffective, at best. Such programs cannot meet the needs of a people suffering the problems of institutionalization and residential school syndrome, cultural disruption and dislocation, abuse, addiction, and violence, in addition to racism and poverty (Royal Commission on Aboriginal People in Urban Centres, 1993). In addition, the failure of the "white" system in regard to aboriginal children was detailed by Manitoba Judge, Edwin Kimelman, who was cited in the report: "All parties are at fault... federal and provincial governments that failed to resolve jurisdictional disputes for care of Aboriginal children, child welfare directors who were unaccountable to their Aboriginal clientele...the Native organizations who remained too silent, too long…" (p. 69), Kimelman also noted the high rate of apprehension of Aboriginal children and that "25 percent of all children placed for adoption were placed outside of Manitoba" (p. 69).

DFG was a product of these neo-colonial patriarchal practices of a neo-liberal state which focusses on power and property, and the patriarchal male Aboriginal groups who are complicit in marginalizing the social/citizenship needs of its people, particularly its women and children. This paternalistic, colonial and racist policies of two levels of government resulted in the practice of high levels of apprehension of aboriginal children and export of many of these children to other provinces/countries. Aboriginal women, without power, were/are silenced by Aboriginal men, who rarely advocate on behalf of the needs of aboriginal women and children.

In this context, services are inadequate and remain insensitive to cultural and gender considerations. Thus provincial and urban community policy makers/funders fail to commit funds to meet the treatment needs of Aboriginal women and their children as advanced by Aboriginal Women's groups. In addition, deficit-reducing provincial governments have cut back child and family service funding and ignored or denied requests for preventive and educational programming. In the same vein, the federal government has cut (Canada Assistance Plan) funding for cost shared programming.

In the face of the substance abusing, pregnant DFG, CFS adopted a neo-conservative stance and attempted to incarcerate DFG in a treatment centre to which she had been denied voluntary entrance. The state, at the level of the provincial government through the auspices of the office of the Attorney General, supported this coercive action by the community based CFS which is responsible for implementing provincial child welfare legislation. Thus, patriarchal and paternalistic neo-colonial practices continued.

The State

To further understand how neo-colonial and paternalistic practices came to bear on DFG, the role of the state and the various actors acting on behalf of the state will be examined.

By way of introduction, it should be noted that Canada in the 1990s is becoming an increasing neo-liberal and neo-conservative state committed to economic globalization founded in an ideology of individualism and laissez-faire corporatism. Such a state increasingly abandons its commitment to the social contract as citizens are constructed as individual and equal players on a "level playing field" and are expected to fend for themselves and their families. Commitment to the common good, through funding to programmes delivering citizenship rights to guarantee human dignity for all citizens, is diminished. The commitment to social justice is replaced by "charity" for the "deserving" poor. Big government is seen to undermine individual responsibility, autonomy and industriousness as well as fettering the economy. Instead of monitoring the business/corporate sector to insure fair and full employment, decent wages and environmental protection, the state is reduced to policing its citizenry.

In this era of consummate individualism, an uncertain citizenry looks to an idealized past and traditional values for a measure of security. The neo-conservative state adopts, and is supported in, a "law and order" approach, to maintain those traditional values, which, it is held, produced a stable (male) work force and stable home life (by women). This neo-liberal neo-conservative state individualizes what had come to be known as systemic wrongs. It is, at best, paternalistic but is, increasingly, punitive. It was in this context the DFG confronted the Canadian state.

Two levels of state are involved. CFS, operating under the auspices of the Manitoba provincial government, initiated the action against DFG, given that provinces are jurisdictionally responsible locally for social rights and thus for delivery of health care, education and social protection and services. English and Canadian common law and the Canadian constitution, including the Charter, provides the framework for the provision of civil rights including fundamental rights and freedoms; equality before and under the law; and equal protection and benefit of the law without discrimination. Such rights and freedoms are guaranteed equally to male and female persons. Provinces administer provincial and federal civil and criminal laws through Courts of Queens Bench and provincial Appeal Courts. Application of the law provincially is subject to appeal and further examination of earlier decisions in the context of common law and the Charter by the Supreme Court of Canada. The majority decision of CFS v DFG (1997) was founded in the common law, which held that the rights of the mother and the fetus are indivisible. The dissenting judgement held that the common law rule of "born alive" in application of the jurisdiction parens patriae was obsolete given modern medical knowledge and technology.

The state was involved through its jurisdictional responsibility to provide protection and care for children and their families. CFS acted on behalf of the provincial government in the delivery of services and the protection of children from abuse and neglect by their parents/guardians.

Legislation, policies and discourse focus primarily on the safety and well-being of children and secondarily, in assisting parents in meeting the needs of their children. Thus, the discourse often focusses on how parents are neglectful and/or abusive and/or reckless or otherwise "unfit" and, thus, cause harm to their children. It is held that the state must intervene to protect children from suffering at the hands of their parents. Children may be apprehended, taken into temporary or permanent care of the state with or without the consent of parents. Parents may be offered, provided with, or mandated into treatment. Failure to follow the state's instruction may result in loss of one's children. Historically, the children subject to state intervention have been "born alive," that is, the state has not been allowed to intervene prior to the birth of the child.

In this context, it is to be noted the DFG is an aboriginal woman, a single mother, poor and addicted to glue sniffing. The paternalistic practices of the colonizers of Canada served the goal of assimilation of aboriginal people into white culture and the forced separation of native children from their parents and placement in residential schools, which, in some provinces, continued to operate until the 1960s. These paternalistic and racist practices continue to inform the ongoing treatment of aboriginal mothers. Kathy

Maller of the Original Women's Network (cited in Why the supreme court, 1997, Winter) reports that the child welfare system has been detrimental to aboriginal families for a long time, apprehending "our" children (p. 6).

The discourse is also increasingly informed by research evidence as to the impact of the mother's use/abuse of substances on the developing fetus. It is held to be the major cause of preventable mental disability as well as secondary disabilities (CFS v DFG, 1997). The discourse and research rarely take into account the impact of poverty, poor nutrition, poor prenatal care and/or violence on the developing embryo/fetus. These conditions all too often co-exist with the use/abuse of substances. The discourse focusses on mothers as unfit, uncaring or reckless in making "choices" to continue patterns of behaviour that endanger children. It reflects neo-liberal discourse of personal responsibility (irresponsibility) which is silent on historical and systemic forces. For the most part, a feminist analysis of the impact of violence, oppression and colonization in the etiology of substance abuse in women, or an analysis of the mother-child bonding process and an ethic of care, are absent.

The discourse that is founded in the common law and the Charter's legal concept or "justice" frames the dilemma as one of "competing" rights of interests - the rights of the mother versus the rights of the fetus or the "unborn" child.

The majority decision R. v. Morgantaler (1988) opened up the possibility of legislating protection of the fetus in the later stages of pregnancy and the Canada Law Reform Commission (1989) in a working paper entitled Crimes Against the Foetus advanced the legitimization of the discourse of fetal rights. The report held that women should avoid becoming pregnant rather than being granted the right to have an abortion because the pregnancy is an "inconvenience" or an "annoyance." Such language trivializes women's experiences and denies their moral integrity. The Commission held that the "law can properly criminalize fetal harm and destruction at the hands of the mother" (p. 47). Major J. (CFS v DFG, 1997) quoted the 1959 U.N. Declaration of the Rights of the Child: "... the child... needs special safeguards and care including appropriate legal protection before as well as after birth..." (p. 986).

Thus, although the form of the state and its intervention did not change, the goals and target of the intervention shifted from the protection of already born children (DFG's three other children had been apprehended) to the protection and/or apprehension of the unborn fetus. The Supreme Court majority decision (CFS v DFG, 1997) held that it was not the court's prerogative to change the legal definition of "person" but referred this matter to Parliament; thus the struggle and discourse continues as one of competing rights and one of personal choice/responsibility, devoid of social context or solution.

The Bureaucracy

Implementation of the policies of the state is in the hands of the state's bureaucracy. As a caveat to the following discussion, I cannot comment on the actions of specific workers and would hold that it is the policies and system of delivering services that must be held accountable.

Two levels of bureaucracy are primarily involved in the case of CFS v DFG, whereas the Federal Department of Indian and Northern Affairs is peripherally involved. As has been noted, the Manitoba provincial government is responsible for provincial child welfare legislation and funding and overall protection of children, including aboriginal children. The provision of direct services and protection of children is delegated to local districts, service agencies and social workers (First Nations Child & Family Task Force: Children First Our Responsibility, 1993) who have continued to provide services to aboriginal peoples and their children in accordance with a mainstream model of child protection and service delivery. This mandate speaks to the dual and sometimes conflicted role of child welfare agencies which includes provision of services to children and their families and protection of children (from their families). Thus parents (primarily mothers) receiving supportive services may have their children apprehended by the very workers who are counselling/treating/supporting them. Workers confront a dearth of services in the face of the cuts in provincial funding and programs or the lack of appropriate treatment/service options. Nembhard, Peters, Boyce, Roberts and Scott (1997) note:

> (F)or over a year, Dr. Oscar Casiro and others have requested the Province of Manitoba to fund a peer-based program to help mothers overcome solvent and alcohol abuse, but the province has been slow to respond... The program uses a mentoring model to teach life skills and address complex issues such as violence (p. 4).

The First Nations Child and Family Task Force (1993) report notes that the majority of children in care (of the Department of Social Services) are aboriginal, the majority of staff are non-aboriginal and within First Nations agencies, senior management are mainly held by non-aboriginal staff: "In the Winnipeg agencies, and within the institutions, where First Nations account for at least 40% of the children in care, the Aboriginal staff account for an average of 8%" (p. 53). It is a bureaucracy that is insensitive to traditional family structures and practices of First Nations peoples.

The First Nations Child and Family Task Force (1993) reported further difficulties. Lack of training opportunities and trained aboriginal staff, combined with cultural insensitivity, medicalization of issues, and heavy handed authoritarian and centralized practices were cited by presenters as difficulties encountered. At the same time, involvement of Chiefs and Councillors of First Nations also proved problematic, with interference and favouritism being concerns raised with the task force: "The structural weaknesses of the First Nations Child Welfare system cannot be ignored" (p. 62). Federal financial responsibility was also problematic as were spending priorities. "Too much money now goes to support the upper level bureaucracies of existing authorities and agencies" (p. 79). Federal unilateral cuts to aboriginal peoples off reserves further undermine service provision.

The mainstream bureaucrats/child welfare workers turned a blind eye to the co-existing variables of poverty, poor housing, poor nutrition, poor pre-natal care and violence, which exacerbate the effects of the substances ingested. Similarly, they turned a deaf ear to the appeals for funding for appropriate rehabilitation services and for supports, services and resources to "help women overcome issues of poverty, violence, abuse and social inequality" as advocated by aboriginal women's groups and the women's health care coalition (Nembhard et al, 1997, p. 4). Instead, the bureaucrats of Winnipeg CFS, joined by the Attorney General of Manitoba, directed funds to proceed to the Supreme Court of Canada in spite of the fact that the DFG had delivered an apparently healthy infant and was reportedly drug free.

The goal of protecting children from mothers who are perceived as incompetent, reckless and/or addicted or "bad/unfit" by a hierarchial and centralized neo-conservative and paternalistic bureaucracy fails to address the social and historical context of these women's lives. The focus on the ingestion of substances as the sole factor at work in fetal alcohol syndrome (FAS) babies is a recent development and ignores recent (in the past 20 years) research that points to poverty and violence as putting fetuses and children at risk to many of the features now attributed to FAS. A Canadian report (Standing Committee on Health, Welfare and Science, 1980), concluded inadequate nutrition during pregnancy resulted in brain damage that was irreversible as well as low birth weights. Learning disabilities, attention deficit and hyperactivity may also result from maternal malnutrition or reflect genetically loaded factors. Many characteristics of children linked to prenatal substance abuse may be linked to postnatal experiences of malnutrition, inadequate health care and lack of maternal bonding, which may result from poverty, abusive relationships or substance use/abuse/addiction. The effect of the ingestion of substances by the father has not been widely studied, however, there is some evidence that alcohol, nicotine, marijuana and cocaine consumption affects, or attaches to, the sperm. Certainly the effects of "Agent Orange" on the sperm (and subsequent children) of the Vietnam war veterans speak to the vulnerability of the sperm. Some researchers believe changes in genetic structure due to substance ingestion is the explanation for the high correlation between alcohol abuse by the sons of fathers who are alcoholic (AADAC, 1996). In a patriarchal society, however, women are seen as inferior (to men) and therefore their behaviour, not that of men, is scrutinized to explain problematic outcomes in children/families. It is to be noted this scrutiny is directed towards poor and racially marginalized women and, in this post colonial context, to women who were labelled "drunken Indians, whores and sluts" in the recent past.

The CFS bureaucracy adopted a patriarchal approach to dealing punitively with substance abusing mothers. A neo-liberal approach individualizes and medicalizes substance abuse and thus decontextualizes it from the environmental factors that may underlie the initiation and continuation of substance abusing behaviour. Treatment approaches based in a medical model, including a rigid 12 step program, fail to address the social/cultural underpinning of addiction. It is to be noted DFG had been unsuccessful through four treatment programs in the past.

The bureaucracy sought to "punish" a "bad" mother by incarcerating her in a treatment centre or apprehending her child(ren), rather than targeting funds to education/prevention/treatment programs and to social support programs to eliminate poverty and substandard housing, and to fund pre- and post-natal care programs as well as educational programs for children afflicted with FAS.

The implications of the action of Winnipeg CFS must not be underestimated. The bureaucrats, on behalf of the state, Winnipeg CFS and the province of Manitoba, acted to incarcerate DFG and thus sought, through the courts, the right to incarcerate all substance abusing pregnant women who have chosen to carry their pregnancies to term. What has eluded most bureaucrats is that mothers who fail their children do so in the context of personal histories and social environments that severely limit, if not their options, then their capacity to choose healthier options, both for themselves and their children. Bureaucrats and social workers faced with the devastating effects attributed to fetal substance "ingestion" too often fail to see the suffering humanity of the mother. It is racist and classist (middle and upper class white women rarely come to the attention of social service agencies) as well as sexist (the impact of paternal substance abuse is ignored) practice that holds some women as less than equal in their integrity, autonomy and humanity.

Individualizing and simplifying the phenomenon of FAS and constructing it as arising out of an individual (woman) willfully or unwilfully ingesting a substance allows the bureaucratic actors to avoid the complex and systemic causes of FAS. Scarce resources are directed to punitive and litigious initiatives instead of toward remedial and preventive alternatives. Thus progress in funding effective solutions that may prevent many children from being born with FAS is undermined by this "quick fix" solution that affects only one pregnancy, one fetus, one woman, at a time.

The Women's Movement

The case of CFS v DFG stands in stark contrast to the rights and freedoms guaranteed to Canadian women by the Charter. A decision by the Courts to uphold the appeal and thereby grant the rights of personhood to the fetus/unborn child would have undermined women's right to abortion and would have had the potential of subjecting all pregnant women, or perhaps all women of child bearing age, to scrutiny by the state. Women would then be vulnerable to forced intervention during pregnancy, in regard to prenatal health care, and through child birth as being in the interests of the fetus (unborn child) and thus the state.

In its final report, Proceed with Care, the Royal Commission on New Reproductive Technologies (1993) addressed the issue of judicial intervention during "gestation and birth" holding:

> It follows that compelling a pregnant woman to conform to certain

> standards of behaviour or requiring her to undergo surgery or other invasive procedures, would constitute an unacceptable violation of her individual rights and her equality rights. It would also have adverse effects on the rights of women generally in Canadian society by imposing on pregnant women a standard of behaviour not required of any other member of society. Permitting judicial intervention therefore has serious implications for the autonomy of individual women and for the status of women collectively in our society. (p. 955)

The Commission recommends an ethic of care by the state: "Consistent with the ethic of care - which is concerned with preventing conflicts instead of trying to resolve them after they arise - we begin by asking questions about how to ensure the best possible prenatal health and the maximum degree of well-being for both the pregnant woman and the fetus" (p. 957).

In the context of this case, it was imperative that the women's movement act on behalf of DFG and thereby all the women of Canada. Women's movement groups became involved in the articulation of the issues and the debate of this case through obtaining intervenor status at the Supreme Court of Canada hearings. The groups involved included: Women's Legal Education and Action Fund (L.E.A.F.); Canadian Abortion Rights Action League; the Women's Health Clinic Inc.; Metis Women of Manitoba Inc.; Nature Women's Transition Centre Inc.; and the Manitoba Association of Rights and Liberties, who made a joint submission in the name of the Women's Health Rights Coalition.

In the wake of the CFS v. DFG decision at the provincial level, the (Winnipeg) Women's Health Clinic initiated discussions with "like minded" community groups, including Aboriginal and Metis women in order to build a coalition to join as intervenors in the case when it went to the Supreme Court of Canada. The Women's Health Rights Coalition (WHRC) was formed, obtained intervenor status and worked closely with other groups including L.E.A.F. The Canadian Civil Liberties Association, although not a women's rights organization, also had intervenor status on behalf of DFG.

The challenge to the action by the state (CFS) was founded in the constitutionally guaranteed rights of "life, liberty and security of person," which L.E.A.F. argued, cannot be suspended for any period in a woman's life. (L.E.A.F., 1997, p. 3). In addition, the intervenors held that the "coercive powers of the state cannot achieve positive health results," rather, the state must provide adequate resources and promote "maternal" health. The Women's Health Rights Coalition held that the state's punitive powers are "used the most harshly against the poorest and most marginalized women among us" (A potent mix, 1997, Winter, p. 2).

The issue was further framed in the context of "the historical and continuing inequality suffered by aboriginal women." The life history of DFG is a poignant example of the legacy and continuation of violence, abuse, racism, poverty, marginalization and powerlessness experienced by aboriginal women. DFG's attempts to obtain treatment to overcome her addictions were unsuccessful, due in part to bureaucratic bungling (Why the supreme court, 1997, Winter).

L.E.A.F. (1997) held that the Court should not create a new regime to control pregnant women, indeed such a regime could be used to violate women's rights to autonomy and security of person at any time during their child-bearing years. The Women's Health Rights Coalition held that granting the fetus legal status would be tantamount to empowering the state to "control over the behaviour of all women of child-bearing age" (Why the supreme court, 1997, Winter, p. 6) and would certainly jeopardize women's rights to reproductive control including abortion. L.E.A.F. argued that restrictions of this nature constitute "sex discrimination." L.E.A.F. held that, in addition, such action would further the historical labelling of some (in this case, aboriginal) women as "bad" mothers and amplify the state's control of mothering.

The Women's Health Rights Coalition (WHRC) held that a "law and order" response is a quick fix solution that does not address systemic and underlying historical and personal causes of addiction. Indeed, the WHRC held that recent government (state) funding cuts threaten the few resources now available to women who suffer addiction (Why the supreme court, 1997, Winter, p. 5).

L.E.A.F. argued that according the fetus rights as a person would socially construct an "adversarial and unwarranted form of maternal-fetal conflict" (L.E.A.F., 1997) and would create, in the eyes of the state, situations in which the "fetus was valued more than the woman" (p. 13) and situations in which "coercion and force (are defined) as help and care" to already poor, addicted and marginalized women. "Equality rights are not to be withheld on the basis of the disadvantage against which they are intended to protect" (p.18). L.E.A.F. situated this argument in the paternalistic and discriminatory treatment of aboriginal women that violates the value of aboriginal women to their traditional communities. In addition, L.E.A.F. held that the state's (CFS) objective to promote the well-being of the fetus (and children) was not met, and indeed argued that efforts to meet this objective in a less coercive manner were not attempted. The WHRC held that coercive and mandatory orders for treatment are "ill-advised" and that the overall outcome may well be detrimental. In addition, L.E.A.F. and WHRC argued that there are other mitigating factors (poor maternal nutrition and health) which were not addressed and that future orders to confine a woman may be to treatment centres that are non-existent. L.E.A.F. (1997) quoted several sources that recommend improved maternal-fetal health initiatives be directed to the underlying social causes of addiction and to development and provision of appropriate treatment programs.

The Women's Health Rights Coalition concluded that increasingly issues with important social consequences, including women's health and equality, are being brought before the courts and therefore warranted a strong response on behalf of women to the Court. It is to be noted that powerless, poor and marginalized women are more likely to be subject to scrutiny by the state and therefore a strong intervention was required.

Thus women's diversity was considered relevant and, indeed, central to this case. The unequal treatment of women before and under the law was noted and that this unequal treatment was confounded and compounded by the variables in the case of history (colonization and paternalism), gender (female), race (aboriginal), class (poor), and health status (addicted). All of these variables were addressed in the context of the Charter and the common law. Moreover, as the Executive Director of the Women's Health Clinic in Winnipeg stated "Women feel deeply responsible about the health of the children they bring into this world and their ability to nurture must be supported by the rest of us. Mother the mother and you mother the child" (One Woman's Story, Winter, 1997, p. 4) and called for recognition that whatever the circumstances, the rights and needs of the woman and the fetus are indivisible.

Such a position may be difficult to defend as one considers that substance abuse may have an ongoing and irreversible, negative impact on the well-being of the fetus, the child, and the adult that the fetus will become. However, to hold to the construction of competing rights, and force women into treatment, will fail to protect the fetus. There are a number of factors that would give rise to this failure. First, significant damage to fetal development occurs prior to the time that the mother and/or concerned others know that she is pregnant. Secondly an approach that involves forced treatment, may drive substance-abusing mothers underground and thus, they may not receive the pre-natal care and treatment necessary to mitigate the effects of the substance abuse and other negative factors on the fetus. In addition, the threat of forced treatment may be perceived as punishment by the woman, and lead to increased feelings of guilt and thus, substance use. It is to be noted that in the case of DFG, she had been through substance abuse treatment programs during earlier pregnancies, and, that she was denied voluntary entry into a treatment centre during her latest pregnancy. At that point, the failure to care rested with the state and not with her. Finally, the provision for forced treatment vests powers in state agencies, which historically have visited grievous harm on women and children (particularly those of aboriginal descent). This harm was well documented by various Royal Commissions that looked into aboriginal and child welfare issues.

If the state and we, as a society, are truly concerned about fetal health, adequate resources will be directed into education and treatment programs to prevent substance abuse, and to assist women, who are substance abusers, in overcoming their addictive behaviour. Such programs should be sensitive to women's experiences of violence, poverty and marginalization, and of limited opportunities. In recognizing the indivisibly of the rights of the mothers and fetus, the state must make a commitment to care for the mother so that she may care for her fetus and her child. Individual mothers may err in their decisions and choices but forcing women into treatment denies their moral integrity. It provides opportunity for the state to cause grievous harm to significant numbers of women and their children because no individual case stands along. It provides precedent for an ever-widening circle of influence and intervention, and possibility of failure and harm.

The Media

The media is the lens through which Canadians view their political landscape. It provides the framework for understanding political action and for defining “reality.” The mainstream media, while holding publicly to a commitment to neutrality and lack of bias, adopts the dominant neo-liberal analysis and discourse. The “reality” thus created reflects and perpetuates the prevailing social structures, commitments and values and focusses on conflict as central to news worthiness.

Less mainstream media may or may not acknowledge their strongly held ideological commitments which may be at variance with those of the dominant media and society. On one hand there is the neo-conservative, neo-liberal right wing media and on the other, the left leaning and sometimes feminist media. The inconsistency of the "facts" reported in "news" stories is noted and may reflect biased reporting to support ideologically based conclusions.

This review of news coverage of the Supreme Court decision includes an analysis of the print media, as TV and radio coverage were not available in libraries or at media outlets. The discussion will focus on a review of the Winnipeg Free Press, the Globe and Mail (Toronto), The Ottawa Citizen, and The Edmonton Journal which carried news reports, commentaries and editorials. Reports and analysis carried in the Alberta Report and Canadian Women’s Health Network (CWHN) of Winnipeg are also reviewed.

Maclean's Magazine reported the decision only, without comment. Herizons Magazine has published a short review of the case since the court case. CBC Radio 1 carried a discussion by Kathleen Mahoney, a constitutional lawyer with the Canadian Bar Association.

The print media, in news stories, framed the case as one of maternal (mothers') rights versus the rights of the fetus (unborn child). In addition, news stories framed the decision in the context of the pro-life versus pro-choice debate. Implicit in media reports is a patriarchal and paternalistic construction of an adversarial relationship between the mother and newly constructed (by science) independent entity (conceptus) which may or may not require/deserve legal status and protection from the mother who carries it. The headlines included: Unborn on their own (Kuxhaus, 1997c, Nov. 1, p A1); Lawmakers must decide rights of the unborn, top court says (Bronskill, 1997, Nov. 1, p. A1); Court puts mothers before fetuses (Makin, 1997, Nov. 1, p. A1); and, Supreme Court won't recognize fetal rights (Supreme Court, 1997, Nov. 1, p. A1).

Presentation is neo-liberal in that it holds the mothers' substance abusing behaviour as the necessary and sufficient cause of future difficulties for the child. Confounding social variables such as poverty, oppression, violence, poor prenatal health care and inadequate or non-existent treatment centres are not listed as causal factors. The mother's failure to obtain treatment is noted; that she was put on a (long) waiting list or that there are insufficient treatment options is, for the most part, not reported. The state's interest in the fetus and society's responsibility to not "stand idly by" while a reckless mother inflicts permanent harm on the child she has decided to bring into the world (Journal News Service and Journal staff, 1997, Nov. 1) stands in stark contrast to neo-liberal society's willingness to "stand idly by" when twenty percent of "born" children live in devastating poverty and all children face erosion of educational opportunities and of health care. This contradiction is not noted. The term, "fetal alcohol syndrome," focusses attention on the mother's use/abuse of substances and makes invisible the social and personal context in which her behaviour occurs, a context which may exacerbate the impact of the substances(s) or may be a form of self medication to deaden the psychological and spiritual pain she experiences. Addiction is presented as volitional and lacks a gender/race/class analysis. A more complete analysis may depict addiction not as "reckless" but as survival. I would note that in the context of protecting "children," DFG was herself 15 or 16 when her first child was born and that the father of her last two children is approximately 29 years older than she is. He stands in for a patriarchal and paternalistic state when he says that the intervention by CFS was a "miracle" (Kuxhaus, 1997a, Nov. 1) and he reportedly "exulted to a Winnipeg Free Press reporter that the baby would be special, and the part it would play in setting a legal precedent that would save many lives" (Bercovici, 1997, Nov. 1, p. D2). This position is consistent with a neo-conservative "law and order" mentality. In this case authority is vested in (1) the medical establishment, which can now "image" the developing fetus and thus the fetus has become "real" (as if it hasn't been for women for ages past); (2) the state, which must protect the "innocent" from those who are "ignorant" and who make "bad choices" - that is, the poor, unwanted and unvalued - and (3) the patriarchal father. It intervenes in the personal lives of people who jeopardize the moral and social order.

The issue was framed as the competing interests of the "objectified" mother, DFG (standing in for all mothers), and the "commodified" fetus or unborn child about which society must be concerned, and is silent on the psychological and spiritual relationship between DFG and the life developing within her. Social services and workers and the new husband are portrayed as caring-paternalistic- and authoritative - knowing what this mother and perhaps all mothers do not know - and able to make wise, although difficult decisions (Kuxhaus, 1997a, Nov. 1). DFG was portrayed as a naive mother who "saw the light" and stayed in the treatment centre after the court was stayed but subsequent news reports indicate that she was reluctant to be involved with the media (Bercovici, 1997, Nov. 1). Television images showed a shrouded DFG being helped into court.

Editorial writers also focussed on a debate framed in the context of competing rights. Comparison to cases involving already born children were made in some editorials. The Edmonton Journal (Fetal rights, 1997, Nov. 4) nevertheless called for provision of voluntary treatment holding that although there "will always be a few tragic cases who refuse help, ... those cases do not justify the incarcerating of pregnant women." Other columnists and editorial writers held, however, that there is a "clear and urgent need to review the law." The Globe and Mail (Why we need, 1997, Nov. 3) states, "While respecting a pregnant woman's right to autonomy, Canadian law must also recognize that a woman who has indicated she intends to carry a fetus to term has a duty to care for that potential life" (p. A14). Analysis and opinion pieces, for the most part, followed in this neo-conservative tradition: "The public was outraged" ... "With yesterday's decision in favour of Ms. Gregory, the pressure is on Canadian lawmakers to react" (Bercovici, 1997, Nov. 1, p. D2), thus created the illusion that the columnist has surveyed public opinion. More inflamatory headlines included: "Bearing a drug damaged child a dubious liberty;" and commentary, "An age when the law could be used to protect us from ourselves, but not to protect children from their mothers, when it was illegal to ride a bike without a helmet, but a sacred liberty to bear a child with fetal alcohol syndrome" (Coyne, 1997, Nov. 4, p. A 15).

The print media, in an attempt for balance, gave equal coverage to the majority and dissenting opinions of the court in spite of the fact that this was not an evenly split decision -- it was a seven to two decision. Writers supporting legislation framed the issues in a "competing rights" rhetoric and imposed a "duty to care" on pregnant women and suggested that if they were unwilling to care and accept "minimal" restrictions on their autonomy, they should exercise their right to abortion. From this perspective, rights are extended to women provided they exercise due "care" in exercising those rights when fulfilling their traditional role of birthing and raising children, which is, under neo-liberal and neo-conservative discourse in the "private domain." The patriarchal and capitalistic state (which must be concerned about the "unborn") must intervene if women do not prove competent in exercising their rights judiciously. (One can hardly imagine incarcerating a whole category of men when they have broken no law on the pretext that they may cause harm, especially to women and children).

Writers supporting a non-legislated response called for treatment programmes and expressed concern that the possibility of incarceration in a treatment centre could result in some pregnant women seeking abortions or avoiding prenatal health care.

Canada's national mainstream magazine, Maclean's, sidelined the issue (Fetal rights ruling, 1997, Nov. 10) by reporting, without comment, the decision. Other publications with limited distribution addressed the issue and the decision. Alberta Report adopted a neo-conservative stance; "Once again the Supreme Court embraces gays and abandons babies" (Woodard, 1997b, Nov. 17, p. 26). (Woodard, 1997a,c, Nov. 17) harkened back to slavery and the "Persons" case for broadening the definition of personhood and turns to Vriend and Morgantaler cases to castigate the Court. The pro-legislation faction of the media calls on the addicted mother to abort the fetus rather than carry the pregnancy to term at the same time that this very faction opposes abortion. No mention is made in their reports of the research which indicates that other mediating variables such as the mother's health and nutrition may affect the developing fetus, that the incidence of FAS in babies born to substance abusing mothers varies from six to seventy percent; that good postnatal care may compensate and overcome the effects of FAS; or that the father's substance abuse may be implicated. These media portrayals of the case involve the use of knowledge, science, and the law to control women. They are silent on women's moral integrity and capacity to care or how these capacities may be thwarted in a violent oppressive patriarchal society.

CWHN provided an analysis of the causes and remedies of addiction from the perspective of marginalized, abused and oppressed women (Why the supreme court, 1997, Winter). It takes into account class, race and social context. Similarly Herizons Magazine reported the majority decision and expressed the feminist concerns this case raised and concluded it is "repugnant that, even as modern women continue to struggle against economic and social oppression, they could face - in significant numbers - the possibility of incarceration" (Murdoch, 1998, Spring, p. 23).

Policy Options (Howe & Covell, 1998, Jan. – Feb.) adopted a neo-liberal discourse and a perverse logic suggesting that in the past children were held to be the property of their parents and stated that we (the state) must now sever this propertied connection between mother and fetus. This view demonstrates the failure of patriarchal neo-liberal discourse to capture the essence of the relationship between the fetus and mother. As noted by L.E.A.F. (Women's Legal Education and Action Fund, 1996) in their factum R.v. Sullivan and Lemay #47, "Viewing the foetus, either as a person or as a person-like separate entity, or alternatively as just another body part of a pregnant women, does not capture the unique reality of pregnancy. These views illustrate the limitations of attempting to conceptualize the foetus from an outside perspective, which abstracts the foetus from its context, namely the woman" (Women's Education Legal and Action Fund, 1996, p. 168).

Given the serious ramifications the outcome of this case had for 51% of Canadians, the media coverage was extremely limited. This lack of coverage reflects the male focus and perspective of the mainstream media. Only the right wing, neo-conservative, unofficial voice of the Reform Party, Alberta Report, gave comprehensive coverage but it focussed on vilifying the Supreme Court.

The Law and the Courts

The central issue before the courts in this case was whether or not a pregnant woman can be incarcerated/treated against her will in the name of protecting the well-being of her fetus. The issue is framed by all parties to the action in a neo-liberal discourse of competing rights. English and Canadian common law does not accord the fetus status before and under the law and therefore does not provide protection except via the interests of the mother. The Canadian Charter of Rights and Freedoms (Charter) states women are entitled to security of person (Section 7) and equal protection and equal benefit of the law (Section 15). The Charter does not accord rights to the unborn (fetus).

A rights-based legal discourse is unable to conceptualize the relationship between the mother and the fetus because, I would submit, it is a relationship unique to women. This failure of discourse results from the historical fact that philosophers, theorists and law givers have been men who have constructed and named "reality" out of their own subjectivity. A discourse founded in an "ethic of care" would overcome the need to construct the fetus as an "independent person" or property in order to address and redress its interests. Such a discourse (an ethic of care) abandons the neo-conservative "law and order" construction of the "need to force" the mother "to care" for the fetus she has "chosen" to carry to term. A discourse of care on the part of the state was adopted by the Royal Commission on the New Reproductive Technologies (1993), who explicitly oppose forced treatment/incarceration.

Federal and provincial laws have been equally silent on the "rights" of the fetus, although Yukon and New Brunswick have legislation which would allow for action against the mother in the interests "of the fetus" (Basen, Eichler & Lippman, 1993). In R. v. McKenzie, a young woman was convicted of a criminal code offense in order to protect her unborn child (Royal Commission on New Reproductive Technologies, 1993).

Manitoba, in this case, had no provision in civil law for protecting the fetus and DFG was not accused of criminal wrongdoing. The state, nevertheless, through the auspices of Winnipeg CFS, attempted to act as if such a policy/law and jurisdiction did exist and that the state could act either in the "interests" of the fetus (parens patriae) against the mother's constitutional rights or accord status and rights of legal personhood to the unborn. In addition, CFS appealed to the courts on the basis of the Manitoba Mental Health Act by holding that the mother, DFG, suffered a mental illness and was mentally incompetent.

In August, 1996, CFS applied for a detention order against DFG. Schulman, J., of Manitoba Court of Queen's Bench, ordered DFG detained on the grounds that DFG was (1) suffering a mental disorder, and (2) the courts had parens patriae jurisdiction to act in the "stead of a parent" to protect the unborn child. Schulman acknowledged that such power had never before been exercised on behalf of the unborn child (CFS v DFG, 1997).

A Justice of the Court of Appeal subsequently held that the evidence did not establish mental incompetency and that parens patriae can be used to protect only children that are born. The detention order was stayed. The decision of the Justice was upheld by the full Manitoba Court of Appeal. Winnipeg CFS and the Manitoba Attorney General however, pursued the case to the Supreme Court of Canada. The issue of mental incompetency was dropped and the appeal was based on the issue of extending parens patriae jurisdiction to protect the unborn child. The Supreme Court, in its majority decision (7 of 9 justices), held that under the common law the unborn child does not have the status of legal personhood, therefore, the state and courts do not have parens patriae jurisdiction over unborn children. The justices held such an extension of personhood would require a change in the law and should be left to the legislature. The Justices did not invite the Legislature to bring down such a law.

The dissenting opinion (2 justices) held that the Court of Queen's Bench judge had acted within his jurisdiction of parens patriae and that the "born alive" rule was a legal "anachronism" and should be set aside.

The courts, as is their duty, acted to interpret the law as it stood and did thereby constrain the state's ability to act. The courts acted to prevent the state from doing wrong to DFG (a citizen of the state). No redress for the circumstances of her life was given or was possible through this court action. The question as to whether DFG, or any other person for that matter, who suffers an affliction such as addiction, could civilly sue the state for damages as a result of failure to meet her (his) health needs remains unanswered. However, the Supreme Court does not, for the most part, concern itself with social rights (decent standard of living, decent housing, appropriate health care and education), but rather concerns itself with "civil" and "justice" rights.

This legal decision, based in the common law, has maintained the status quo in regard to the "rights of the unborn." The Charter continues to be involved to protect the rights of women to abortion and against invasive medical procedures and one would have hoped it would have been cited in this case also. In a less neo-liberal and neo-conservative political climate, policy makers could choose to target resources to education and addiction treatment centres, and implement the non-coercive recommendations of task forces on FAS, new reproductive technologies and aboriginal peoples. And, as the Canadian Human Rights Commission has recommended, the state could address issues of poverty, including low income and substandard living conditions, which have been held as confounding variables by the task forces. The state could also target resources to meet the needs of victims of violence (men and women as well as children) and to end the ongoing intergenerational cycles of violence through education and early intervention.

However, the courts and the legal system have said the issue of fetal rights is a matter to be determined by Parliament. In a discourse of competing rights, the rights of the unborn and the state's interest in the unborn would stand in opposition to the legal rights and interests of the mother, and would ultimately, I would suggest, give the rights of the unborn priority over those of the mother. However, it may be that according the unborn personhood would require an amendment to the Charter itself and would require consent of two thirds of the provinces representing fifty percent of Canadians.

If such a law were written, that is, according the status of personhood to the unborn, application for the law to force pregnant women into treatment centres would have to withstand a Charter challenge (Section 28) on the basis of sex discrimination as outlined in the L.E.A.F. submission to the Court. The outcome of such a challenge might well depend upon the composition of the Court and its sensitivity to gender issues and the pro-choice/pro-life debate.

The Political Parties

The Supreme Court of Canada in two separate cases (R. v. Morgentaler, 1988, and CFS v DFG, 1997) avoided addressing in a definitive way the matter of fetal rights and has held such an issue is a matter for Parliament, if it is to be addressed. Mandel (1994) cites Wilson, J. in R. v. Morgantaler (1988): "I think Section 1 of the Charter authorizes reasonable limits to be put upon the woman's right having regard to the fact of the developing fetus within her body" and further "(T)he precise point in the development of the fetus at which the state's interest in its protection becomes compelling, I leave to the informed judgement of the legislature" (pp. 416 - 418). A less "inviting to legislate" statement is made by McLachlan, J. in CFS v DFG (1997): "If (emphasis added) anything is to be done, the legislature is in a much better position to weight the competing interests and arrive at a solution that is principled and minimally intrusive to pregnant women" (p. 924, line 46). Although the Conservative government of Brian Mulroney attempted to bring forward legislation in regard to abortion, the bill which caused an "unholy" alliance between pro-life and pro-choice groups was defeated by a tie vote in the Senate. In regard to the CFS v DFG decision, the members of the House of Commons and the Senate have been almost silent.

A review of Hansard from the Manitoba Legislature (November-December 1997) and the Hansard: House of Commons (November 1997-February 1998) reveals two entries on the subject of FAS and the unborn. The Manitoba Legislature was not sitting when the Supreme Court of Canada rendered its decision in the case CFS v DFG on October 31, 1997. The Legislature came into session in late November. Although issues of cuts in funding to family and children's services and to aboriginal services, as well as issues of child poverty were raised, the issues at the centre of the court case were not addressed. A New Democrat Official Opposition member (male) raised questions about an acquittal in a case of selling Lysol and hair spray. He asked, "Why the acquittal," "would the Crown appeal," and "would the Minister designate substances such as Lysol and hair spray as non-potable addicting substances" (Hansard: Manitoba Legislature, 1998, April 13, p. 1498). Although the use of inhalant was the addiction DFG was reported to have suffered, there as no reference to CFS v DFG.

In the House of Commons (November 3, 1997) Reform member Keith Martin asked the Minister of Justice, Ann McLellan if she would act to protect the unborn. The Minister replied that the issue at hand was a provincial responsibility (Hansard: House of Commons, 1997). On November 4, 1997, M.P. Martin, in a Member's statement to the House, called on the Minister to encourage provincial ministers to amend mental health legislation and stated it was not an "abortion bill" but a measure to "prevent children from being poisoned" (p. 1526).

On February 12, 1998, Liberal Senator Stanley Haidasz gave notice that he would introduce a motion to establish a joint House of Commons and Senate Committee on the "Unborn Child," citing the current lack of protection under Canadian law for the unborn child; the interests of the state in providing a measure of protection of the unborn child to secure future generations; the need for study of the Charter as it relates to the unborn child; and, the case of CFS v DFG as well as other comments made by the Court

(Hansard: Senate Debates, 1998, Feb. 12).

On February 26, 1998, the motion was debated. Senator Haidasz stated that the Supreme Court held that the issue of fetal rights was a matter for parliament not the courts and held that this committee should study and should draft a statement or legislation to fill the gap the court had outlined. He hoped another Senator would take up "his challenge to carry the torch of conducting this enquiry" (Hansard: Senate Debates, 1998, Feb. 26, p. 1165). Liberal Senator Gigantes noted the Court did not call for legislation but said if something was to be done, it was up to Parliament. There is a "distinction" he noted (p. 1166). Liberal Senator Stewart raised the issue of the impasse in the earlier abortion debate and wondered if anything had changed. Tory Senator Kinsella noted jurisdictional difficulties. The debate was adjourned with no decision.

Although the political parties remain, for the most part, silent on the issue, one could predict positions that parallel party action/stands/policies to those articulated in the abortion debate. However, given the political difficulties raised by the abortion issue and in spite of the construction by some print media writers and commentators of a social consensus, (for examples see: "The public was outraged" [Bercovici in Globe and Mail, 1997, November 1, p. D2] and "...society increasingly feels the need for preventing mothers who are planning to give birth from damaging the fetus" [A delicate balance in the Winnipeg Free Press, 1997, November 1, p. A 18]) on the need for action, it is doubtful such a consensus exists and it is uncertain if legislative action will be taken.

Brodie (1992) outlines party positions and gender splits in the abortion debates: "All pro-life speeches were given by men" (p. 69) and all but one woman who spoke, gave pro-choice speeches. Pro-life speeches came primarily from Conservative members (the Reform party was unrepresented in 1988 but it is strongly anti-feminist and pro-life); the Liberal Party was split and the New Democrat Party unanimously held a pro-choice position as it is party policy. The New Democrats (both male and female) promoted a position of reproductive rights situated in the context of social rights to care and support and would hold "that women are fully responsible citizens, capable of acting in the best interests of both themselves and their fellow citizens (thus) feminism's insistence on political and economic equality comes through clearly" (Jensen, 1997, p. 305).

I would predict that if the issue of fetal rights came to the House of Commons, the vote would be governed by procedures in place when the abortion bill was debated/voted including a free vote or vote with "one's conscience"; only the New Democrats would have formal policy and put "the whip" on. The debate would be framed in a neo-liberal discourse of completing rights and a neo-conservative discourse of protection of the unborn innocent "person." For the most part, the personhood of the mother would be invisible or would be decontextualized and societal and treatment solutions, I believe, would not be offered. The outcome of such a debate is hard to predict.

The Reform and Conservative parties, which are pro-life, would support legislation to protect the "unborn" from their mothers, through a truly anti-woman rhetoric and discourse. The Liberal party would be split. It is to be noted that Senator Haidasz (cited in Brodie, 1992) had called for "life time imprisonment of abortionists," (p. 68) and Justice Minister McLellan has reportedly said, other than to consult with provinces, "I have no intention of dealing with this" (Journal News Service, 1997, November 1, p. A3). It is also interesting to note that politicians and commentators, for the most part male, calling for legislation, cloak their argument in an ethic of responsibility and care for a child the mother has chosen to carry to term and hold that, if the mother is unwilling to follow through on this ethic by "giving up" her addiction, she should abort the fetus. This is a chilling alternative for pro-choice, anti-legislation proponents who fear the spectre of enforced confinement and treatment may result in women seeking abortions. In addition, this position -- that an addicted woman should just have an abortion -- is not only dishonest and hypocritical in as much as the persons making the suggestion are opposed to abortion but demonstrate how gendered this issue is.

[1] The Reform Party, with its neo-liberal and neo-conservative right wing agenda, had the lowest percentage of female candidates of any federal party in the 1993 federal election. Deborah Grey, deputy leader, is an outspoken critic of feminist analysis and demands. The two parties who have been most empathetic to women's concerns have been the New Democrat Party, which traditionally has had the greatest percentage of women candidates, and the Liberal party, which has had the largest percentage of women elected (Arscott & Trimble, 1997). The 34th Parliament (1988 - 1993), with the highest

ever percentage of women MP's (18%), was noted for its feminist consciousness among many of the female MPs. This consciousness influenced the work done in The House and may have modified to some extent hard held ideological differences in regard to feminist concerns (Arscott & Trimble, 1997). In the 35th Parliament, the existence of a more extreme right wing party (Reform Party), in competition with the more moderate Liberal and Conservative parties, appears to have marginalized women's concerns as they decry Keynesian economic policies and the welfare state and support globalization, debt/deficit reduction, privatization, deregulation and devolution of powers and responsibilities to the provinces (and the municipalities).

In such a climate there is small comfort from the state for women and their interests.

Conclusion

The case of CFS v. DFG reminds us once again of how tenuous and fragile women's freedoms and rights are. It demonstrates that women's right to personal autonomy and integrity, security and personal freedom can be swept away by judicial edict. It demonstrates that an individualistic and "objective" empiricist science can support patriarchal medical practice and patriarchal societies, religious communities and states in marginalizing and controlling women's reproductive experiences and choices.

The need for feminist involvement and action at every level of societal and political endeavour emerges as does the need for a feminist discourse that challenges patriarchal construction of women's experience and human life.

It was the feminist movement that gained for women the vote and the status of personhood in regard to "rights and privileges" as well as "pains and penalties." It was feminist action that forced inclusion of Section 28 in the Charter. It was women who worked for the creation of the Royal Commission on the Status of Women. It has been women justices who wrote majority opinions in R.v. Morgentaler and CFS v. DFG. It has been women's "scientific" research and academic work that have demonstrated gender biases in the courts, scientific research and theory and medical practice, and in the record of history. It has been feminist theory and practice that has given impetus to creating treatment programmes that are sensitive to gender, race, class, disability, sexual orientation and social context. In reviewing royal commission reports, the influence of gender on framing and articulating is noted; in reviewing Hansard (House of Commons), the influence of feminist women is to be noted as is the influence of feminist thinking on media framing and reporting of the "news." It is feminists, as artists and authors, musicians, poets and writers that give voice to women's everyday human experiences and longings, and women themselves who gather on the steps of the Legislature or who sit in the Houses of the Parliament that advance women's freedom.

This is not to say that the women's movement and struggle has not faced its own internal difficulties regarding how to analyze and theorize the issues and strategize for change. There have been struggles about the politics of inclusion or exclusion as well as of commonality and essentialism. Feminists interrogate the nature of the process for change and the shape of the change that results even as they struggle to understand and define equality and freedom.

At this time of economic globalization and corporate capitalism, supported by neo-liberal individualism and neo-conservative values, feminists around the world must challenge the discourse and practices that threaten the progress we have made. In these times, perhaps all we can do is celebrate that in this one instance harm was not done, "hold back the darkness" of past times, and continue to struggle for rights and our freedom.

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CHAPTER III

FOR THE SAKE OF CHILDREN: PREVENTING RECKLESS NEW LAWS *

> We need to know, to fight, and to prevent reckless new laws, to change bad old ones.
>
> (Michele Landsberg in Crean, 1988)

Introduction

This paper is one of a series of case studies analyzing the challenges faced by Canadian women in the last half of the twentieth century. Although women may face different challenges or similar challenges in different ways due to conditions of race and ethnic status, economic class, varying abilities (and disabilities), and sexual orientation, they face these challenges as women who live in a patriarchal society. Each case study elaborates on one woman's or a group of women's experiences and demonstrates the need for a feminist voice if women's experiences and claims are to be integrated into the social fabric of Canadian society, and embodied in its laws and institutions, and in the definition of legal and social relationships.

This case study is founded in hearings of The Special Joint Senate-Commons Committee, which was established in 1997 by Canadian Justice Minister Allan Rock to study custody and access. The Committee received submissions, both written and oral, from across Canada. This paper situates the Hearings in a social and historical context,

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which is marked by changing economic and social relationships. The focus of this study is on conflicting claims presented by women- and child-centered groups, and by fathers' rights activists and groups. The first section outlines historical practices in relation to child custody and the forces that precipitated the Hearings. In the second section, a summary of the oral presentations to the Committee is provided. The third and fourth sections address issues in the law and research findings, respectively. The final section draws conclusions and makes recommendations.

Canadian divorce and child custody laws, or family law, have evolved over the last century, in what Ursel (1992) has labelled as a transition from familial to social patriarchy. Prior to 1855, a woman's property (and her identity) was merged upon marriage with the man's such that all property (including her body) belonged to the husband and, under English common law, children belonged to the father (as the only person with the status of legal "personhood"). Not until 1855 did any Canadian mothers, in cases of widowhood, separation, divorce, or abandonment have even limited legal claim and recourse in regard to their children. Women's limited claims after 1855, in regard to children and property (financial support), were extinguished if a married woman committed adultery; however, adultery, and violence or cruelty, did not jeopardize the husband/father's claims. By 1912, unmarried mothers could petition for support from their child's father. Nevertheless, fathers of children of marriage were recognized and assumed to be rightful custodians and mothers were only granted custodial rights under special circumstances such as the "tender years doctrine" (Ursel, 1992).

Sociologists note that the off-loading of child care responsibilities onto mothers coincided with the change in economic conditions and extended family structures arising out of the Industrial Revolution, including urbanization, and the creation of the nuclear family with clear cut roles of "breadwinner" and "housewife," with child rearing maintained as "private" responsibility (Crean, 1988).

The final decades of the 19th century saw introduction of child protection legislation and establishment of provincial welfare bureaucracies which were primarily regulatory (Ursel, 1992) and which reinforced roles of fathers as breadwinners and mothers as providers of child and family care. In the period before and after the Second World War, the state, through welfare initiatives, assumed increasing responsibility for subsidizing the family unit, including mothers and children, through introduction of provincial mother's allowance, which nevertheless excluded unwed mothers as unworthy, and deserted women as the responsibility of their husbands (Ursel, 1992). The introduction, in British Columbia, of The Equal Guardianship Act (1917), recognized for the first time in Canadian law that: "The husband and wife living together shall be joint guardians of their minor children with equal power, rights and duties in respect thereto, and there shall be no paramount right to either in connection therewith" (cited in Crean, 1988, p. 23). In the succeeding decades, as paternal financial responsibilities were increased, paternal custodial rights/claims were diminished as women as mothers were presumed to be better caregivers and a maternal presumption in case law rather than legislation followed from a patriarchal view of motherhood, an ideology of biological determinism' (Crean, 1988) and served the division of labour of the industrialized state.

Nevertheless in the decades after the Second World War, women's work in the paid labour force increased, and the principle of "the best interests of the child" emerged such that mothers no longer automatically relinquished child custody claims if they committed adultery. Thus, in the 1960s and 1970s, gender neutral terms such as "the best interests of the child" were legislated and replaced the "tender years doctrine" or maternal preference in case law, in order to make the courts more "even-handed" in the disposition of cases involving custody. The "best interests of the child" replaced the concept of "parental rights" with one of concern for the welfare of the child, which may include consideration of economic stability and full time caretakers, in the future. It may make invisible the primary caregiving provided during the marriage even if the mother was employed, as well as the systemic economic disadvantages suffered by women. With liberalization of divorce laws (in 1968 and 1986) and increasing divorce rates, contested custody awards were legislated to be granted in accord with the "best interests of children" and increasingly were determined through professional assessments. At this time (the 1970s and 1980s), attention was increasingly focussed on violence (physical and/or sexual) perpetrated in the home, with women and/or children the targets of the violence. When the issue of wife battering was first raised in the House of Commons, it was greeted with laughter, but, by the late 1980s, violence against women and children was on the public agenda. Badgely (1984), Rogers (1990), and the Canadian Panel on Violence Against Women (1993), presented an alarming (and in some sense unbelievable) picture of male violence. Women's shelters, sexual assault centres and programmes for abusive men were established.

Non-contested cases (approximately 85 percent) resulted in mothers retaining care and custody of children in the majority of cases. Child maintenance issues were raised in the face of documented impoverishment of women and children of divorce, due to low child support awards and wide spread failure of fathers to pay (Department of Justice, 1990; Foote, 1984; Institute of Law Research and Reform, 1981; Steel, 1984), at the same time that women received approximately 65-70 percent of what men earn for paid labour. Mnoohen (cited in Steel, 1984) held that 80 percent of fathers could pay court-ordered support and still maintain a comfortable standard of living. Some researchers conclude that fathers' failure to pay reflected unresolved hostility and bitterness towards the ex-wives, and a failure to come to terms with this new relationship of debtor and creditor (Institute of Law Research and Reform, 1981).

As the state became increasingly concerned about the welfare costs of maintaining/subsidizing single mothers and their children, children's poverty and the failure of fathers to be responsible for their children, state maintenance enforcement strategies were strengthened and became increasingly punitive. Women's groups organized around taxation practices, and inconsistent and low child support awards. Fathers' rights groups were formed to challenge the "maternal presumption," denial of access, and punitive maintenance enforcement measures. In response to fathers' rights activists, specific access enforcement bills were introduced at the provincial level and adopted by a number of legislatures. In the context of women's struggle against gender discrimination and for equality, fathers' rights groups have called for a new gender equality, including joint custody and equal financial responsibility for child rearing costs. Women's groups have called for acknowledgement of the impact of spousal (primarily husband) violence in family life and the well being of children and further, that victims of violence (primarily women and children) be protected from further or ongoing abuse by the abuser (primarily the father). Feminists hold that the "best interests of the child" must address pre-divorce behaviour and parenting patterns which may or may not have involved fathers as primary caregivers, or at least as significantly involved with their children, but which, in large measure, involve mothers in the day to day caregiving and nurturance of children. Second families created after divorce are another variable raised in the context of maintenance in terms of priority of financial responsibility and in terms of mobility issues. At the same time, there has been an increasing criminal justice response to spousal violence.

In 1997, during parliamentary study of Bill C-41, which amended the Divorce Act to provide for mandatory child support guidelines, fathers' rights activists came forward with "compelling" stories of the difficulties non custodial parents (primarily fathers) had in the courts and in exercising access. Bill C-41 was blocked in the Senate by Senator Anne Cools and a coalition of Tory Senators until then Minister of Justice, Allan Rock, agreed to establish a Senate-Commons Joint Committee on custody and access (Dennis, 1998). Hearings were held across Canada from February through June, 1998 and a report, For the Sake of the Children (Special Joint Committee), was released in December, 1998. It contained a majority report and three dissenting minority reports: one by the Reform Party (three members), a second by Bloc Quebecois (two members) who registered total opposition to 8 recommendations and only partial support for another 29 of the 48 recommendations of the majority report; and a third by the New Democrat Party (one member) who made a number of alternate recommendations in regard to poverty and violence.

This study of the Proceedings of the Special Joint Senate-Commons Committee on Child Custody and Access (Proceedings) will draw on recorded testimony of fathers' rights activists (a minority of divorced fathers) and of women's groups, primarily feminist women, to elaborate two competing constructions of the "reality" of Canadian divorce. Research evidence is presented to challenge or verify the "realities" thus presented. As a caveat to this discussion, it must be noted that the focus is primarily on the experiences of middle class women and men, and does not fully address the differential impact of divorce and custody/access disputes on marginalized women including those women living in poverty, aboriginal and immigrant women, disabled women and lesbian women, which is beyond the scope of this study. Provincial law and practice in relation to child protection, which involves state apprehension and custody of children, is similarly not subject to examination in this paper. These matters, however, require thorough examination.

This study demonstrates that the hearings presented patriarchal fathers' rights activists an opportunity to challenge women's emerging social and political equality. Fathers' rights groups characterize feminist women as man-hating, and ex-wives as uniquely vindictive, malicious and vicious in their attempt to destroy men and their relationships with their children. They have constructed a "reality" based on anecdotal evidence and clinical experience that remains unverified by empirical research. Nevertheless, the "reality" thus constructed resonates with patriarchal consciousness, has penetrated a neo-conservative media and is supported by a neo-liberal discourse including its emphasis on "equality" and "gender-neutrality". The reality of women's bearing, and for the most part, rearing of children, recognized for a short period of Canadian history, has again been rendered invisible and/or inconsequential. The father-child bond is idealized and replaces an archaic and now unacceptable principle of paternal preference and ownership of children. Thus, fathers' claims are cloaked in a rhetoric of children's rights and of male victimization. In the context of this "reality," women's claims of male sexual and physical violence, widely documented by empirical research, are held to be suspect or are dismissed as self-serving and false. In addition, women's economic inequality, in some measure due to women fulfilling child rearing responsibilities as well as systemic inequality and discrimination, further jeopardizes their claims to custody of children. Women's economic disadvantage may outweigh relationships of care in determining the "best interests" of children, and mothers are further disadvantaged. Economically successful women may be disadvantaged as having abandoned their mothering role.

This study further demonstrates how a model of justice founded on patriarchal ideology and paternal privilege may be obscured by a rhetoric of "care" and "best interests." It also demonstrates the risk of an "essentialism" that characterizes all women as socially determined victims and/or as socially and biologically determined to be "good" mothers, and all fathers/men as socially determined to be violent and/or as socially and biologically determined to be primarily economic actors. In addition, the study demonstrates that "gender-neutrality" may blind us to the social and cultural reality in which men and women lead gendered lives of unequal power and influence. The debate, however, is not split along gender lines. Second wives of men's rights activists and neo-conservative women and women's groups join the minority of divorced men who constitute fathers' rights groups. Men, as researchers and clinicians with abused women and children, and with abusive men, and feminist men's advocacy groups join women's advocacy groups and service coalitions. Most importantly this study demonstrates that women's struggle for equality in the "public" domain may be used to undermine women's legitimate claims in the "private" domain of their lives.

This study includes a review of the published record of the Proceedings and focuses primarily on presentations made by groups and individuals who could be identified as either part of, or aligned with, fathers' rights activist groups and individuals, and with child rights and women centered groups and individuals. Government documents provided to the Committee are reviewed, including a consolidation of federal and provincial laws which pertain to divorce and issues arising out of divorce. Research data in the areas raised by presenters is reported. Conclusions are drawn about the Committee process itself and the foundation and legitimacy of claims made.

The Hearings

Conduct of the Committee

A review of the Proceedings of the Special Joint Committee reveals that not all presenters were treated equally and that some Committee members exhibited deeply held biases and hostilities. There appeared to be distrust of presentations that were women and child-centered and/or feminist on behalf of women who had been battered and their children. On the other hand, these same Committee members accepted, without question, presentations made in the name of fathers' rights. It is to be noted that fathers' rights presenters gave powerful testimony about loss of their children, an experience with which we all could identify and would fear.

For the most part, feminist and child-centered presenters who raised the issues of gendered violence were rigorously questioned by Committee members, and one such presenter was admonished by Senator Anne Cools who suggested that perhaps testimony should be given under oath. This questioning may reflect M.P. and co-chair Roger Galloway's belief that "A woman can say 'I spent a night at the women's shelter'. Is that evidence of abuse? Or is it a very thinly disguised attempt at getting custody?" (Canadian

Press, 1998, p. A3) and Senator Anne Cools' view of shelter coalitions as "lobby groups" (Proceedings, 27-4-1998, p. 17:146) and her concerns about the "…stubborn resistance of large numbers of people in the social service system to believe that women can tell lies, and do so on occasion when it suits their purpose"(27-4-1998, p. 17:85). At one point, Senator Cohen challenged Senator Cools stating: "But you have to work with women and violence. These women should not be attacked ….(A)nd I believe that you do not come to concrete conclusions if you create a war zone here" (31-3-1998, p. 11:38). In the face of unrefutable evidence of severe battering, Senator Cools mused, "It makes you wonder why some of these people marry such bastards" (27-4-1998, p. 17:146).

For the most part, submissions from fathers' rights activists were welcomed and received with sympathy. The veracity of their statements was unchallenged, and support for their statements was often offered by some members of the Committee. In giving their personal testimonials, presenters often provided court documents and case numbers as well as the names of judges and other professionals involved. In some instances, in which presenters had insufficient time to complete the presentation, the entire submission was entered into the record of the Proceedings. In other cases, committee members, such as Senator Cools, relinquished the time allocated to them for questions to allow the presenters to complete their submissions. Information gathered at informal gatherings arranged by Senator Cools and co-chair Galloway with father's rights activists was also accepted by the Committee.

Terms like "parental alienation syndrome," "false allegations," "false memory syndrome," "fatherlessness" and "dance of death" were introduced by Senator Cools (for example see Proceedings 11-3-1998, p. 5:28). In addition, Senator Cools provided precise dates if witnesses were unsure or had incomplete information about example court cases (for example, see Special Joint Committee Proceedings 11-3-1998, p. 5:24). Presentations were couched in terms of "children's rights" and "best interests of children."

Bloc Quebecois and NDP members of the Committee raised concerns about the hearings in their respective minority reports (Special Joint Committee on Child Custody and Access, 1998). The Bloc Quebecois Dissenting Opinion states:

> Although the Committee should have emphasized parental responsibilities it must be acknowledged that instead it was transformed into a battle of the sexes. It is regrettable both that the positions of fathers and mothers became so polarized and that some people chose to question the ground women have struggled long and hard to gain. (p.112)

Peter Mancine, ND member of the Committee wrote, in the New Democrat Dissenting Opinion, about the lack of access for rural Canadians and further elaborated concerns: (1) a lack of public notice given to enable all interested parties to appear before the Committee, (2) a perceived bias by some Committee members; and (3) the poor treatment and lack of respect shown witnesses by some Committee members.

This author further notes bias in the Majority Report, of the Special Joint Committee on Child Custody and Access namely: "In situations where allegations are made, the father faces a difficult if not impossible task of trying to disprove something that may not have happened," (p. 83) a statement which implies that mothers do not face allegations of abuse and neglect. In addition, the Majority Report requires that violence be "proven," (p. 45) before it become a factor for consideration in determining custody/access matters, a statement that suggests unproven violence is probably fabrication.

In conclusion, the evident bias of some Committee members undermines the credibility of the Majority Report and made necessary two of the three dissenting reports. It further polarized an already divisive issue and cannot provide a sound foundation for changes in the law which should recognize the interests of all citizens.

Representation of Women's and Children's Issues

Presenters from child-centered and feminist groups and individuals focussed their presentations on custody/access issues arising out of violence against women and children. They raised concerns about the impact of "gender bias" in the courts and of "gender neutral" terms and analysis in determining custody/access outcomes. It was held that because the courts do not understand the dynamics of violence in the family and economic and social disadvantage of women, the needs of women and children are sacrificed. Presenters recognized that women may be violent but that their work had been with women who had been abused and that they could not comment on female violence against men.

Feminist and child-centered presentations to the Joint Committee were delivered by organizations that have a traditional mandate to speak for women's rights and equality. National organizations which made feminist presentations included the National Association of Women and the Law (NAWL), National Council of Women, National Action Committee on the Status of Women (NAC), the YWCA, and Aboriginal and Metis Women's Associations. In addition, local branches of women's advisory councils, local women's shelters, and provincial coalitions of shelters, local coordinating committees to end family violence (including Montreal Men Against Sexism) also presented. Individual women and men presented professional perspectives, research and front line work experiences. Few women gave personal anecdotal presentations and often their presentations were cut short due to time constraints. A number of feminist and women's organization presenters noted the lack of advance notice or publicity about the hearings.

Presenters noted that only 15-20 percent of cases of divorce presented with violence and/or high conflict and only 5 percent of all cases go to trial. However, that research indicates that 29 percent of Canadian women reported having experienced at least one episode of violence and 15 percent of women reported being assaulted by a current partner. Research cited also indicates considerable overlap with child abuse in which children are targets of violence including sexual abuse.

Child-centered and feminist presentations recommended a gender analysis in the study of custody and access reform holding that a "gender neutral" analysis ignores or obscures the inequalities and power relations that exist between men and women. The current "gender neutral" analysis, which treats unequals as if they were equals does not lead to equality and "justice" but more deeply entrenches inequality and power imbalances.

Presenters proposed that it is in the best interests of children to be nurtured and loved by two caring parents and noted that even in situations of abuse, most battered mothers wanted and facilitated contact between children and their fathers. However, they held that legislaters must not deny or ignore the reality of violence in the home and that it is not in "the best interests" of children to be witness to, or targets of such violence and/or to see the cycle of violence continue after separation and divorce. Many presenters noted that custody and access disputes and litigation are methods by which abusers continue to harass or control and abuse their spouses and/or children. According to the presenters, many judges, police officers, psychologists/social workers and mediators had an inadequate understanding of violence and believed, incorrectly, that either the violence would stop upon dissolution of the marriage and/or that children were unaffected by the violence they witnessed or experienced and, thus, non-abusive spouses and children are not at risk to ongoing violence. Concerns were raised about psychological assessments which failed to address the impact of violence on the parents' ability to parent as well as on the children's well-being and/or the intransigence of the abuser. It was reported that some assessors believe false allegations are widespread and dismiss allegations of abuse raised in the context of custody/access disputes as the work of vindictive, spiteful women such that women report being afraid to voice the allegations for fear of losing custody of their children to the abuser.

Child-centered and feminist presenters indicated that marriage breakdown is not an appropriate time to redefine parental responsibilities in the interests of "gender equality." Adherence to maintaining existing relationships, particularly with the "primary caregiver," was held to be in the "best interests" of the child, although terms such as "primary caregiver" and "best interests of the child" may be problematic. In addition, they held that abused women and/or their children were put at risk by the current emphasis on co-parenting as encoded in the "friendly-parent" rule of the Divorce Act, or adoption of presumption of or mandatory joint custody; mandatory mediation and/or a mandatory "parenting plan." These initiatives require ongoing contact between abuser and the non-abusing members of the family and provides opportunity for continuation of abuse and control. The caregiving parent may be rendered powerless to provide for the needs of the children (education, recreation, medical, counselling) without the abuser's consent and this consent may be withheld by the abuser to demonstrate ongoing control. It was stated that mediation is founded in labour practice of competing, but equal, interests and power, and may disadvantage women, particularly abused women, because they often feel powerless and unable to voice their best interests due to the power differential or out of fear of arousing the abusers' anger and hostility. In addition, it was stated that mediators are ill-equipped to handle this anger and conflict except by compromise and conciliation. Presenters were further concerned that the interests of both parties were assumed to be self-serving and equally valid and thus both parties are required "to give" a little. Such an analysis, it was held, fails to address unseen dynamics of gender roles or violence in which women are unaccustomed to voice or impose their own needs and/or are unable or unwilling to name the violence and voice their fear, if present. Such women, it was held, are coerced to give in against their better judgment and the best interests of their children and themselves.

In the context of the "joint-custody" debate, presenters noted that often proponents of joint custody really wanted decision making authority but were not expecting to be involved in day to day caretaking or the "responsibilities" of parenting. Presenters held that "the friendly parent rule" and initiatives to "enforce" access put children at risk of abuse and prevented non-abusive parents from protecting children from abuse, although it should be noted that parents may lose their children to child welfare authorities if they fail to protect. Thus, the non-abuser parent is double-binded inasmuch as parents who fail to protect their children from abuse may have their children apprehended by child protection authorities. On the other hand, if a parent acts to protect a child from an abusive parent by withholding access, that parent risks losing custody to the abuser. Nevertheless, the threat of loss of custody to abusive partners is a powerful deterrent to women leaving abusive relationships and/or acting to protect their children. Some groups recommended a presumption whereby an abusive spouse is precluded from having either custody or unsupervised access to any children of the relationship. They further held that children should not be forced to visit parents whom they feared.

In the context of allegations of widespread denial of access, feminist groups noted that failure by the non-custodial parent to exercise access, or sporadic and unpredictable exercising of access, is more prevalent and more problematic and disruptive for children.

Feminist presenters also raised concerns in regard to women further disadvantaged and marginalized by "categories of disadvantage," including aboriginal women, racial minority and immigrant women, women with disabilities, of differing sexual orientation and economic disadvantage, including living on social assistance or in low income employment. Disadvantaged women may suffer from prejudices founded in racism and stereotypes. Aboriginal people are vulnerable to losing their children to a "white" parent. Immigrant and racial minority women may lack information about their rights or the resources available to them, or even how to access the system. They may lack proficiency in English (or French, as the case may be) and cannot access professionals (lawyers, social workers) who speak their "mother" language. Similarly, women with disabilities may have difficulty accessing resources or may be subject to prejudices about their capacity to parent. Gay and lesbian parents may face discrimination on the basis of prejudices and ignorance about homosexuality and their capacity to provide stable and nurturing environments for children. Poor women may not have the money to pay for lawyers and social workers/psychologists to represent their interests. Presenters held that legal aid and interpretive services should be available as required. It was held that aboriginal and immigrant women present unique challenges to a system that is founded in traditional "white, middle class" values, which hold to certain standards of discipline and nutrition, and housekeeping and family arrangements (where children sleep, how many in a bedroom, etc.). In addition, support of members of the extended family may not be facilitated. Immigrant women may suffer alienation and marginalization in their own communities as they challenge cultural beliefs about the place and role of a woman in the family and community.

In conclusion, child-centered and feminist presenters focussed their submissions on the needs of Canadian women and/or their children, particularly those who suffer abuse at the hands of the husband/father. They held that issues of violence must be a central consideration in custody/access determinations. They held that gender bias in the courts results in a lack of understanding of the economic and social disadvantage women face and the dynamics of the abuse women and/or children suffer. Their concern was with preservation of the parent-child bond wherever possible but they noted that variables such as threat and violence may require limiting or severing access/custody. Presenters acknowledged that women may be violent, but that their work was with abused women and children whose voices they believed must be heard.

Representation of Fathers' Rights

Fathers' rights activists presented their many concerns about the outcome of divorce including their loss of custodial rights, due to what they called "feminist" bias in the law and the current belief systems about fathers and male violence. They held that this lead to a collusion between ex-wives and the "system" including judges, lawyers, police officers and social service professionals to deny them their rightful claims to their children.

Fathers' rights presentations were received from across Canada and dominated the hearings. Presentations were made by groups explicitly identified as advocating for men's and fathers' rights and included "Fathers' Rights Action Group" and the "Coalition for Canadian Men's Groups." However a significant number of fathers' rights groups presented under a family justice and/or equality rubric of "Parents of Broken Families," "Shared Parenting," "Human Equality Action and Resource Team," "In Search of Justice Equitable Child Maintenance and Access Society," "Parents Helping Parents," "Family Forum," as well as the women's groups, Alberta Federation of Women United for Families (AFWUFF), and REAL Women, who support traditional family structures and prerogatives. The majority of presenters on behalf of groups recounted their personal difficulties and stated it was these experiences which had lead either to joining or founding the support group. Professionals associated with the fathers' rights groups also presented independent submissions. A significant number of individual submissions were delivered by men, and in some cases, second wives and grandparents, outlining heart-rending personal experiences. Many of the individual presenters belonged to the above named support and lobby groups.

Many fathers' rights activists held that Parliament and the laws, the judiciary, lawyers and law enforcement officers, and research institutions, psychologists and social workers are prejudiced against men and/or are fearful of a "feminist" outcry if men were treated, as they saw it, equitably and fairly. Although some presenters acknowledged that, in the past, women may have been treated unfairly, they stated that, at present, women are greatly advantaged over men and receive "special" treatment that casts fathers aside as mere "wallets" or sources of economic support, without rights to make decisions or have information about their children's well being. They based this conclusion on their own personal experiences which were generalized to all divorced fathers and mothers, and all children of divorce. They maintained that all they were requesting was gender neutrality and equality for men. Considerable concern was raised over the fact that most provinces have stringent and punitive maintenance enforcement laws and programs but that access is either not enforceable under the law or that it is not enforced except under circumstances of flagrant violation.

Many individual presenters or groups of individual presenters (fathers and/or step-mothers and/or grandparents), detailed lengthy and unsuccessful court battles over custody and/or access which, they stated, had bankrupted them. They held that fathers don't "stand a chance" of getting custody due to social stereotypes and/or unsympathetic judges and family assessors, or due to false allegations of physical, emotional and/or sexual abuse levied by "vindictive malicious" mothers. Presenters stated that lawyers, police officers, therapists and shelter staff were complicit in the "epidemic" of "false allegations," the so called "weapon of choice" or "silver bullet" in custody cases.

Presenters stated that women went to shelters to strengthen their custody claims, and that shelter staff promoted or encouraged allegations of abuse because of their (shelter staff) "hatred of men." In addition it was held that lawyers and/or counsellors instructed women to allege abuse and/or file affidavits falsely alleging abuse and/or violence in order to further their case for custody, and in some cases, for non-access by the father.

Presenters stated that women are at least as, or more violent than, men, but that police officers, social workers and society, as a whole, refuse to believe this. It was held that if police officers attended a "domestic dispute," the man would be automatically apprehended, with or without evidence of wrongdoing, even if it was the woman who had initiated the violence and/or inflicted injuries. Presenters stated that women were rarely or never apprehended or charged. It was held that there is all kinds of support for women who were abused but none for men similarly abused. These inequities were blamed on the power and influence of government-funded women's groups and it was held that such funding should be halted.

Some presenters held that abortion is wrong and that divorce is "too easy." They stated that "no fault" divorce should be abolished, or that there be a "cooling off period" of several months to a year(s). According to some presenters, the "friendly parent rule" is a joke and is never considered by judges. Some held that the notion of "the best interests" of the child was "hogwash," that low economic status and stability should mitigate against mothers having custody, and that "fatherlessness" was a major malady suffered by children, adolescents and youth. In addition, fathers were turned into "childless parents" by mothers and the state. It was held that "fatherlessness" leads to many social ills including alcohol and/or drug use, criminality and suicide. Presenters stated that fathers' depression, violence, homicide and/or suicide were incited by separation, divorce and loss of the children. They held that, in the majority of cases, the first incidents or reports of violence occurred in response to separation and/or denial of access. Fathers fail to exercise access because they "just give up." They also stated that failure to pay maintenance was a result of denial of access. Other presenters held that child maintenance impoverished fathers, who cannot afford legal counsel, or to support their subsequent families.

Presenters stated that denial of access was tantamount to child abuse – the worst form of abuse and more damaging than violence. They held that mothers "brainwashed" children into not wanting to see their fathers through lies, use of "false allegations," creation of false memories and denigration of the father. Such actions, it was held, resulted in the child suffering "parental alienation syndrome," which was held to be another form of severe child abuse.

Fathers' rights activists called for gender equality and neutrality, stating that women are increasingly in the paid labour force and therefore fathers can (and do) take on equal parental responsibilities. Some presenters also held that mothers should have equal financial responsibility for child rearing. There was much discussion about eliminating terms like "custody" and "access" to be replaced with terms like "shared parenting." A presumption in law of "joint custody" and co-parenting was recommended. Many recommendations as to the logistics of such arrangements were offered, including children alternating residence once every half week, every week, or every month, or parents moving in and out of the "family" residence in a similar manner. Parents who wished to move away for reasons of employment or new relationships would relinquish custodial rights. Failure to provide access would result in either loss of custody and/or criminal charges with penalties including incarceration. Making false allegations and swearing false affidavits, it was held, should also be criminalized. Professionals, including lawyers, psychologists and social workers, would also be subject to criminal and professional sanctions in cases where allegations did not stand the test of criminal court processes.

Many presenters held that most problems in divorce/custody/access disputes could be prevented if lawyers were not involved. They held that lawyers profited from escalating conflict and hostility in divorce cases. Lawyers, they stated, encouraged or coerced their clients (women) into making allegations of abuse and/or swearing false affidavits. Presenters held that mandatory mediation and education should be legislated. It was held that refusal to participate in these processes, or to communicate with the other partner should result in loss of custodial claims. Concerns about potential for violence were considered and dismissed, for the most part, because presenters held that either the allegations were fabrication or exaggerations or that the violence was a result of the adversarial nature of divorce. When violence was recognized by presenters, it was characterized as unnatural and "heinous" and women were admonished to "just leave." Otherwise it was held, they (women) were willing participants in an addictive "dance of death."

In summary, fathers' rights activists hold that men (as fathers) are victims of a feminist conspiracy that includes parliamentarians and lawmakers, the judiciary, lawyers and the police, and social workers and psychologists, who act in a gender-biased manner to deny fathers a role in their children's lives other than to provide financial support. It is held that this conspiracy is fuelled by widespread allegations of abuse (physical and sexual) and complicity of lawyers and social workers/psychologists/researchers in the creation of "mass hysteria" analogous to the Salem witch-hunts and burnings. Fathers' rights activists state that severing of the father-child bond or relationship is abuse and is more damaging than other forms of abuse, and perhaps by implication, more damaging than severing the mother-child bond or relationship. Strong sanctions are recommended for women, and the professionals who conspire with them, against fathers. Fathers' rights activists rarely acknowledged male wrongdoing, and when it was recognized, such wrongdoing was held to be a response to female vindictiveness and power or, in a minority of cases of violence, to be heinous and aberrant. Statistics on female victimization were minimized, dismissed as a result of research bias or countered by claims of the greater incidence of female violence.

Common Issues in the Debate

Both fathers' rights presenters and child-centered and feminist presenters addressed common concerns, including children's need for parental nurturing by both parents, issues of gender bias in the law and its application, concerns about the language of the law and the courts, and, finally, the issue of violence and allegations of abuse. Although the issues indicated a commonality of concern, there was wide divergence in the analysis of the problems and the solutions proposed. Very differing perspectives were offered to the Committee.

A central theme that emerged was importance of children knowing and being nurtured by both parents. It was, for the most part, a value assumed by all presenters. However, women's groups held that in instances of spousal and/or parental physical, emotional and sexual violence abuse (approximately 10 percent of cases), the abuse must be a central factor in the determination of access and/or custody. It was held that access may be limited, supervised or prohibited in order to protect the victim(s) of the abuse from further victimization. Fathers' rights activists held that denial of access or alienation of children (by the mother) from the non-custodial parent (typically the father) constituted the most serious forms of child abuse and should result in the removal of the child(ren) from the care (including access) of the offending parent. Both groups of presenters noted non-custodial fathers' failure to exercise access as a problem.

Both women's groups and fathers' rights presenters held that the system is fraught with gender bias. Fathers' rights activists stated that "the system" is biased against fathers (and men) and sees them as "wallets" or sources of economic support, but as unable to function as primary caregivers. As a result women get "custody" of children in a disproportionate number of cases and fathers (and their second families) live impoverished lives. In addition, it was held, men are seen as violent perpetrators of abuse and women as victims and this further disadvantaged men. These groups stated that women's violence is unrecognized and unacknowledged but is widespread and more prevalent than male violence. They stated that "false" allegations of violence were used by women to win custody. In contrast, women's groups held that the focus on gender neutrality failed to recognize women's political, economic and social disadvantage and the primary role of women in the raising of children. They stated that "gender neutrality" blinded the courts and social institutions to issues of primary caregiver bonding with child(ren) and violence against women and children. It was held that the majority of custody cases were uncontested with custody going to the mother by default but, in those cases in which the father seeks custody, he has a 50-70 percent chance of obtaining custody. Women's groups expressed concern that issues of violence were often not considered in determining custody and access and that the fear of being charged with making "false allegations" silenced many women who had been abused, or women whose children had been abused. Presenters noted that men may be abused also; however, their (the presenters') experience was with abused women. They held that violence and abuse are never acceptable, by women or men.

The language of divorce also proved problematic for all presenters. Fathers' rights activists called for a change in the language of divorce by replacing words like "custody," "access," "sole custody" or "residential parent" with words like "shared parenting," "co-parenting," "a presumption of joint custody," and "mandatory parenting plans." Mandatory mediation and arbitration, and mandatory parental education were recommended by fathers' rights activists and some professional mediators. Women's groups were concerned that much of what was being represented by initiatives like the co-parenting terminology was an attempt to obtain ongoing power and control (decision making) without a concomitant increase of responsibility for day to day caregiving. In addition, presumptions and provisions such as mandatory mediation overlook power imbalances and violence in relationships. Some (but not all) professional mediators agreed that, in the presence of evidence of violence, mediation is not an acceptable option. Few opposed mandatory education. Presenters who had worked with abusive men held that the impact of such education on an abuser may be negligible as most abusers either deny or justify their abusive behaviour.

The incidence and nature of violence and allegations of abuse were raised by both groups and proved most problematic for the Committee. Much of the debate between women-centered groups and fathers' rights presenters centered on perceptions of abuse and allegations of abuse. Fathers' rights activists rarely addressed the issues of male violence except to say that "false" allegations of abuse and violence are widespread and that the "system" colludes with women to deny custody and access to fathers. They held female violence as more prevalent than male violence. Presenters detailed their own experiences and relied on one piece of research and several self-published authors to substantiate their claims.

A number of women's group presentations were made by shelter staff, shelter coalitions and treatment agencies, in regard to their experience with battered women. They used Statistics Canada research to substantiate their claims of widespread abuse of women and children and, when questioned by Committee member about the veracity of their reports they stated, in a number of instances, that they did not have the financial resources to research the number of incidents of violence and/or homicide suffered by their clientele. Anecdotal evidence by battered women themselves was, for the most part, not given. The presenters noted the fear of raising issues of violence during divorce proceedings and they stated that women were advised not to report their fears or their children's disclosure of abuse for fear of jeopardizing their right to parent and/or protect their children.

Finally, the issue of access again presented conflicting claims. Fathers' rights groups stated that there is widespread denial of access, and lack of enforcement of access orders. Some presenters held that there was no provision in law for enforcement. They stated that many fathers were either bankrupted trying to exercise access or just gave up trying to see their children. In addition, they held that their children were turned against them or feared them. Women's groups stated that there was widespread failure to, or irregular exercise of, access. Shelter workers indicated that even battered women tried to facilitate contact between their children and their fathers because they believed that children have a right to know their fathers. However, presenters noted, children often feared and did not want to see abusive and violent parents.

The Law

Many issues in regard to the law, as written, were raised. The issues concerned the wording of the Divorce Act, legal remedies for enforcement of custody/access, the legal response to threat and/or violence including restraining and ex-parte orders, legal remedies in cases of perjury and false allegations, and finally, standards of proof in criminal and civil matters. This section reviews the law as written and as applied through case law.

Custody and access provisions are covered in Canadian Civil Law under the federal Divorce Act (1985), and provincial legislation. The Divorce Act applies to "legally married" individuals. Implementation and enforcement of federal as well as provincial legislation is a provincial and territorial responsibility. Custody and access orders, whether made pursuant to the Divorce Act or provincial legislation are presently enforceable through civil contempt proceedings with various provincially set penalties, including fines and imprisonment and, in some provinces, loss of custody. Newfoundland recognizes and authorizes redress for failure to exercise access.

The Divorce Act enshrines the principle of "the best interests of the child" and through the "friendly parent rule" holds that a "child of the marriage" should have as much contact with each parent as is consistent with those "best interests" and further, that, in determining custody, the court will take into consideration the willingness of each person seeking custody to facilitate such contact. Each province recognizes the child's interests, and legislation in several provinces (Saskatchewan, British Columbia, New Brunswick, Newfoundland, and the Yukon) identifies factors contributing to the "best interests of the child," and several provinces (British Columbia, Manitoba, New Brunswick, Newfoundland, Prince Edward Island, Quebec, Saskatchewan, and the Yukon) provide through legislation an opportunity for the wishes of the child to be heard. The Divorce Act (1985) s. 16(5) provides for the right of the non-custodial parent to inquire and obtain information about the health, welfare and education of the child.

The Divorce Act (1985) prohibits consideration of past conduct in determining custody/access unless it is deemed relevant to the person's ability to parent the child. However, ongoing threat and/or violence are of concern. All provinces except Nova Scotia have legislation providing for restraining orders against persons for "harassing, molesting or annoying" the applicant for custody, or the custodial parent, and/or the child(ren). Provincial legislation provides for authorization of "ex-parte" restraining orders in the absence of the respondent spouse if the court determines taking time to give notice would compromise the safety of the applicant and/or the applicant's children. The applicant must demonstrate immediate risk of harm, and the order is given for a very short time only, pending notice to the respondent and a full hearing (Alberta Law Reform Institute, 1995). The Alberta court has the right to refuse to enforce an applicant's right to custody by reason of misconduct of the applicant. The Quebec Civil Code (S.Q. 1991, C.64) provides for withdrawal of parental authority. Ontario, Yukon and New Brunswick courts may vary custody orders in cases where it is held that on a "balance of probabilities," the child would suffer serious harm at the hands of the parent. Newfoundland legislation provides grounds for denial of access (Department of Justice Canada, 1998).

The Divorce Act. 1985 s. 9(2) spells out the duty of "every barrister, solicitor, lawyer or advocate" who acts on behalf of a spouse in a divorce action to discuss the advisability of negotiation and to inform the spouse of mediation services as available. Quebec legislation provides for mandatory attendance at an information session on mediation to settle disputes unless contra-indicated by reasons of power imbalance, physical or psychological conditions, or geographical distance. For the most part, provincial legislation recognizes and encourages and/or mandates mediation as an alternate dispute resolution strategy. Alberta mandates attendance at educational sessions, which address parenting after separation.

The Criminal Code, R.S.C. 1990 c.4, s.140(1) provides for criminal charges of public mischief for making false allegations of abuse or criminal behaviour, with penalties ranging from a fine to five years imprisonment. The Criminal Code (1990) prohibits perjury. In addition, both the person who makes a false statement, and knowing it to be false, by way of Affidavit or "solemn" disposition, and the person who permits the statement to be sworn knowing it is false are subject to penalty. In addition, the Criminal Code (1990) prohibits fabrication of evidence (s. 137) by means other than perjury. Abduction or kidnapping of a child in violation of a custody order and/or in the absence of a custody order are prohibited (s. 282 and 283) and may be an indictable offence.

The civil standard of proof of wrongdoing is "proof on a balance of probabilities" whereas the standard of proof in criminal cases is "proof beyond reasonable doubt." Rogers (1990) cautions against applying the criminal standard of proof in civil cases, stating that decisions in civil matters (custody and access) should not be determined by the outcome of criminal proceedings (criminal charges of spousal/child abuse). Rogers (1990) further holds that civil proceedings should proceed as expeditiously as possible to serve the "best interests" of the child and that the balance of probabilities test be applied to allegations of child abuse in civil hearings (as it is in child welfare cases).

Research

The Courts: Custody and Access

Differing claims about how custody/access decisions are made, implemented and honoured were presented to the Committee. In this section, research data and interpretation from the research literature is reviewed in order to elaborate the legal outcomes for parents and children in times of divorce and separation.

Research indicates that the majority of divorcing couples (85 percent) settle custody without going to court (Brown 1988, Crean, 1988), with the mother retaining sole custody in the majority of cases. In the 1970s, 85 percent of sole custody awards went to mothers and 14.4 percent to fathers, but by 1987, 76 percent of sole custody awards went to mothers, 9.5 percent to fathers, 8.8 percent were joint custody, and 4.4 percent split custody (Crean, 1988). In 1987, fathers petitioning for custody succeeded in 43 percent of cases and, by the 1990s, researchers estimate challenging fathers succeed in 50-60 percent of cases (Boyd, 1992; Brown, 1988; Dennis, 1998; Jodoin, 1989; Taylor, Barnsley & Goldsmith, 1996). Wertzman, cited in Boyd (1992), determined that two thirds of fathers who petitioned for custody obtained it through negotiation with the mother. Armstrong (1983) reported that, in the United States, in 63 percent of contested cases, custody is awarded to the father, and Chesler (1986) held that two thirds of fathers petitioning for custody received it. Research indicates that taking children to hockey games may be equated with nursing sick children and taking them to the doctor, and a second wife or paternal grandmother may be held superior as a primary caregiver to mothers who have to, or choose to, work in order to support their children, or by disadvantaged women in low paying jobs, who are on social assistance or who may want to move in order to enhance employment opportunities and income (Brown, 1988; Boyd, 1992; Boyd, 1997). Thus, if the mother is poor, she may be deemed unable to provide financially; if she is employed in a professional career, she may be deemed to have abandoned her mothering responsibilities.

In a survey on "access to children" conducted in Alberta in 1992, 68.7 percent of custodial parents were female and 79.1 percent of non-custodial parents were male (Perry, Bolitho, Isenegger & Paetsch, 1992). Nevertheless, 1998 Statistics Canada figures which are cited by Special Joint Committee on Custody and Access (1998), in For the Sake of the Children, indicate that 86 percent of children and youth live with their mother after separation, seven percent live with their father, and six percent live in a joint custody or shared physical custody. In addition, Mason (1994) cites Furstenburg who, reporting on a five year longitudinal study of shared parenting, concluded that "On the basis of our study, we see little strong evidence that children benefit psychologically from the judicial or legislative interventions designed to promote paternal involvement (p. 172). It appears that joint custody changes little and may not be the panacea it is said to be. Wallerstein and Blakeslee (1989) note that, "Sadly, when joint custody is imposed on families fighting over custody of the children, the major consequences of the fighting are shifted on to … the hapless and helpless children" (p. 304).

Research indicates that failure to exercise access is more prevalent than denial of access (Jodoin, 1989; Perry et al., 1992), indeed that sporadic and undependable exercise of access is a frequent problem. Perry et al. (1992) noted that 92 percent of custodial parents wanted the non-custodial parent to maintain contact with the children, and that "custodial parents were more in favour of maintaining extended family member relationships than were non-custodial parents (61.6 percent versus 53.5 percent)." Crean (1988) reviewed a 1986 survey by the Manitoba Attorney General's Office of 121 Winnipeg parents with court-ordered access. Results indicated that 74 percent said they had no difficulties at present or in the past and 85 percent reported they generally were able to get access. Richardson (cited in Crean, 1988) reported similar findings and noted that one third of women mentioned that their ex-husband's unreliability in exercising access was a problem. Seventy percent of custodial parents and 63.6 percent of non-custodial parents in the Alberta study (Perry et al., 1992) reported that denial of access seldom occurred. Forty five percent of custodial parents and only 36 percent of non-custodial parents felt access time was less than what they preferred. Custodial and non-custodial parents agreed, for the most part, that it was better to work out these disputes on their own rather than turning to the courts for resolution. Wertzman (cited in Crean, 1988) reports similar findings in California, noting that non-custodial fathers complain about mothers making access difficult or denying it; that custodial mothers complain about fathers' "erratic" schedules or behaviour (being drunk, on drugs, or threatening violence); and further that custodial mothers raised concerns about fathers who failed to visit, that "they worry about their children feeling neglected or abandoned by fathers who do not call or see them regularly" (pp. 157-158). Wallerstein and Lewis (1998) found that a father's "interest and availability to his children tended to fluctuate widely in accord with the father's sense of success or failure in other parts of his life" and was "unpredictable from the parental interactions at the time of the breakup" (pp. 374-375).

Perry et al. (1992) concluded that most non-custodial parents were not denied access to their children by either the custodial parent or the courts and that negative feelings expressed by non-custodial parents towards custodial parents and/or the courts may have been due to loss of control over their relationship with the children and unfulfilled expectations. Further, Wallerstein and Blakeslee (1989) propose that post-divorce fathers lose their sense of "generational continuity," and their defense against their own mortality.

In conclusion, an analysis of the law, as presented to the Joint Committee by the Department of Justice Canada reveals that the law, as written, is in "gender neutral" terms and requires a focus on the "best interests of children," advocates involvement of both parents with children after divorce, and prohibits denial of court ordered access and custody, and of swearing of false affidavits and making of false allegations. The law in practice, as revealed through research, indicates that men have at least an equal chance of gaining custody in contested cases as do women and that denial of access is not widespread and is of less concern than failure to exercise access. Finally, research evidence clearly indicates that fathers do not suffer disadvantage at the hands of the courts and that most non-custodial parents (primarily fathers) do not suffer involuntary separation from their children. They may, however, choose to separate themselves from their children and this is an issue that needs study.

Violence and Allegations of Abuse

Presentations about violence and allegations of abuse raised the most contentious issues for the Committee and provoked strong reactions from some Committee members. Violence in the home has been on the public agenda for approximately two decades but only recently has it been addressed in the context of divorce. This section deals with current research as to the incidence and impact of this so called "domestic" violence and the nature (and veracity) of allegations of abuse including sexual abuse of children.

Until the 1980s the law and the court downplayed the reality and effect of "domestic" violence although violence directly against children had been subject to scrutiny under provincial child protection laws. Research evidence as to the incidence of violence in the home has been gathered from police and court records, through random surveys and through examination of clinical and community service data. Although both men and women participate in verbal and physical violence, the consequences of male violence/aggression are deemed more serious. Statistics Canada Research of police statistics indicates that 11 percent of victims of domestic violence are male and 89 percent are female; 94 percent of familicides (killing of one's spouse and children) and 76 percent of non-familicidal spousal killings (in which only the spouse is killed) were committed by men, and women are more likely to be injured or intimidated by their partner's abuse (Bala et al., 1998). Thirty three to 50 % of women assaulted by their partners fear for their lives, 50 – 61 % suffer physical injury, ten percent of women injured suffer internal injuries and miscarriages but only 40 % see a doctor, and 38 % of women (two Canadian women a week in 1991) murdered were killed by a current or estranged male partner (Statistics Canada, March 1994). The Canadian Panel on Violence Against Women (1993) reported that in Montreal, between 1982 – 86, only three percent of male homicides were committed by female partners who were in imminent danger whereas 50 percent of female homicides were committed by men who could not accept that their partner was leaving, or as revenge for leaving.

Ursel, cited in For the Sake of the Children, (Special Joint Committee on Child Custody and Access,1998) reported on data from Winnipeg Family Violence Court, in relation to 5,674 cases over a three year period. She stated that 92 percent of perpetrators of spousal abuse were male and 89 percent of their victims were female; of 562 convictions for child abuse, 89 percent of the accused were male, 76 percent of victims were female. Statistics Canada (1995) reports that 25 percent of women using shelters required medical attention and 33 percent reported to police. Alberta Justice reported on 1,262 cases of violence between married, cohabiting, or estranged couples in the first quarter of 1993 and stated that charges were laid in 55 percent of these cases, with males being charged in 94.8 percent of cases in which charges were laid (Alberta Law Reform Institute, 1995).

Research done by Murray Strauss in the 1980s is often cited to support claims that women are as violent or abusive as men (McKenna & Blessing, 1998). Strauss framed the issue as one of "family violence" founded in the premise that some families have poor conflict resolution skills and that failure to negotiate difficulties can lead to violence. Strauss developed the Conflict Tactics Scale (CTS) to survey who uses violent tactics in families and concluded that "there was 'a near equality between husbands and wives in domestic assaults'"(Strauss, cited in McKenna & Blessing, 1998, p. 82). Walker (cited in McKenna & Blessing, 1998) points out that the CTS did "not account for the difference in gender response styles, particularly women's tendency to over-report their own aggressive acts and men's tendency to under-report theirs."(p. 82) In addition, it does not address issues of motivation, including aggression, retaliation and/or self protection. Nor does it take into account differences in body size, physiology (chest-breast area), or of muscle development and strength, and does not include sexual violence, all of which affect the impact, physically and psychologically, of the violence.

In response to this often cited research by Straus and theorizing by Steimetz, Berk, Fenstermaker, Berk, Loseke and Rauma (1983) note that Straus centered on "conflict tactics" but not the consequences, particularly for women in this "mutual combat." Berk et al. (1983) reported, in their study of "domestic disturbances," that 43 percent of women were injured and seven percent of men reported injuries (four percent of these incidents involved both parties being injured). Berk et al. (1983) further stated that, in incidents in which injuries were reported, women were victims 94 percent of the time whereas men were injured 14 percent of the time. Data from the American Department of Justice (1980) indicated that, when victimization occurs, 95 percent of the time it is the woman who suffers (cited in Berk et al., 1983). Berk et al. (1983) conclude, "It is … clear that if by the term 'battery' one means assault with physical consequences, we can find no substantial evidence for the battered husband syndrome; our data show that it is women who are battered" (p. 210). Such an analysis does not indicate that only men batter but it does show that a preponderance of battering is perpetrated by men. In addition, this violence against women is perpetrated in a context in which women suffer economic disadvantage and dependency conditions, which entrap the woman. "The assaulter can cease or leave at will; the assaulted is 'pinned down' under the blows."(Held, 1995, p. 211)

Child physical and sexual abuse may also occur in homes where there is violence against or between spouses. Research indicates that anywhere from 25 to 75% of men who abuse their spouses also abuse their children but the relationship between abusing a spouse and abusing children is less strong for women (Bala et al., 1998).

Sexual abuse of children and allegations of sexual abuse also occur in the context of divorce and custody disputes. This section will review research data as to the incidence of sexual abuse and the veracity of allegations of abuse including those allegations raised at the time of separation and divorce. Sexual abuse may occur in a context involving other forms of abuse including physical abuse of the children and/or the spouse/parents. It is primarily perpetrated by the father or father figure. Kelman (1998) reports that Ontario Children's Aid statistics indicated that fathers were implicated in 54 percent of physical abuse cases and 90 percent of sexual abuse cases. Sexual abuse of children is also reported in seven percent of cases of domestic battering (National Clearinghouse on Family Violence, 1996) and for a number of reasons may not be disclosed until the time of separation (Crean, 1998). Proof is difficult to obtain especially with young children (Rogers, 1990). That childhood sexual abuse is prevalent is well documented in the research literature.

Freyd (1996), after reviewing the literature on child sexual abuse, reported the following findings: In 1953, Kinsey reported that one in four female and one in ten male children suffered childhood sexual abuse; Finkelhore in 1979 found 19 percent of female and nine percent of males reported forced sexual abuse prior to age 18; and, in 1986, Russel found 16 percent of females sexually abused by a family member (Freyd, 1996).

Despite documentation of the high incidence of childhood sexual abuse through surveys with adults, allegations of sexual abuse by children remain problematic, especially in the context of custody/access disputes. In addressing the issue of false allegations or disclosure, Yuille (1993) states that most surveys estimate that 90 percent of allegations are true and notes further that only two percent of custody cases involve allegations of sexual abuse. According to Yuille (1988), research by Green, done in 1986, which is often quoted to support the thesis of widespread accusation in custody cases, is of questionable validity because of a small sample size, a biased sample and weak definition of abuse. Thennes and Tjaden (1990) investigated over 9,000 divorce cases and found that less than two percent involved false allegations of abuse with 48 percent of all allegations brought by mothers against fathers and 30 percent brought by fathers against mothers and their new partners. Recent research by Bala and Schuman (1999) held that, of allegations of abuse brought by custodial mothers against non-custodial fathers, 23 percent were considered substantiated and only 1.3 percent were considered intentionally false, whereas, in cases where the allegations were made by non-custodial fathers against custodial mothers, only 10 percent were substantiated and 21 percent were held to have been "maliciously" made. In the remainder of the cases, allegations were either suspected or categorized as unfounded (50% of allegations by mothers, 72% of allegations by fathers).

Conte (1992) concludes that there is not a single empirical study documenting false allegations as more common in custody disputes than in child abuse accusations that occur independent of custody/access disputes. Gardner (cited in Armstrong, 1994) states that "genuine sex abuse of children is widespread and the vast majority of sex allegations of children (including those made during custody disputes) are likely to be justified (perhaps, 95 percent of them)" (p. 145). Gardner has nevertheless written extensively on parent alienation syndrome and false accusations of sexual abuse. Rogers (1990) notes that research shows that less than 10 percent of allegations are false and that there are far more false denials by abusers than false allegations by children, and concludes, "It should be noted that there are no documented cases in Canada in which a person was wrongfully convicted and imprisoned for child sexual abuse, but there are many cases in which individuals have not been charged or have been acquitted despite their abusive acts" (p. 79). Jaffe (cited in Bala et al., 1998) states, "In my experience of over 20 years of completing custody and visitation assessments, the real problems lie in overlooking violence and most women under-reporting out of embarrassment, humiliation, and lack of trust for legal and mental health professionals" (p. 16). Brown, Frederico, Hewitt, and Sheehan (1998) after reviewing data from court registries concluded that the rate of false allegation of sexual abuse was nine percent and that the perception of widespread use of false allegations in divorce cases is "inaccurate." Nevertheless, in the context of custody disputes, women's and children's allegations tend to be dismissed. Jaffe, Wolfe and Wilson (1990), who have done extensive work with battered women, their children and batterers note: "It is surprising that a recent book about custody assessments left out the topic of violence except to warn professionals to be cautious about exaggerated reports of violence by women" (p. 108). In 1988, Sugarman (cited in Armstrong, 1994) in a Harvard and Massachusetts General Hospital study, found that 75 percent of children who said they had been sexually abused by a divorced or separated parent were not believed "despite physical symptoms, regression and post traumatic stress" (p. 188). As Rogers (1990) and Freyd (1996) note, because we do not know and cannot prove exactly what happened does not mean that abuse has not occurred. It is often classified as unfounded or not substantiated, but should not be construed as false.

Criminal culpability is particularly difficult to prove due to the unwitnessed and private nature of the violence, lack of physical or corroborative evidence and due to the lack of disclosure or reporting at the time the abuse occurs. In child abuse cases, the child may be reluctant, or unable, due to age and level of cognitive development, to testify in court (Rogers, 1990). Finkelhor (cited in Freyd, 1996) noted that, in one study of college students who suffered childhood sexual abuse, only 42 percent reported that they told within the first year, and one third had told no one until questioned by the researcher. In addition, many children (and battered wives) recant. Summit (cited in Freyd, 1996) holds that children recant in the face of ambiguity about what happened, the ambivalent relationship with the perpetrator, and the indifference and/or disbelief by adults in the child's life. Sorenson and Snow (cited in Freyd, 1996), commenting on confirmed sexual abuse cases stated, in "approximately 22 percent of cases, the children recanted," and of the children who recanted, "93 percent later confirmed the original complaint of abuse" (p. 52).

In relation to implanting memories, Olio (1994) states, "Currently there is no scientific evidence to indicate that false memories of sexual abuse have been or can be implanted in people who do not have trauma memories" (p. 442). Freyd (1996), in discussing implanting of memories, states that the ease of implanting memories may depend on "how closely that memory overlaps with actually experienced events"(p. 55). Reviere (1996) concludes from a review of the literature that, although peripheral details of an incident may be subject to modification or distortion through suggestion, "the possibility of creating through suggestion, entire memories never experienced is questionable, and little systematic research supports such a phenomenon" (p. 77). Sayaitz, Goodman, Nicholas, and Moan (1991) who did a study with 5-7 year old girls who were subject to the suggestions that inappropriate touching had occurred, concluded that even "younger children were not uniformly suggestible … their resistance to abuse-related suggestions was substantial" (p. 640) because the children refused to say the abuse had occurred when it had not.

A number of presenters (and Senator Anne Cools) referred to "clinical syndromes" which had been constructed by practitioners as a result of their observations with specific client groups. These syndromes have not been subject to scientific research and verification to determine incidence of the syndrome in similar client populations or to elaborate on causal relationships. For instance, children may suffer in the context of divorce but causal factors of such suffering may include pre-divorce conflict, loss of economic status and dislocation from community and school. To say the divorce in itself causes all the suffering obscures the complexity of the problems suffered and may lead to simplistic solutions. It also overlooks the many instances in which children and parent(s) benefit from the dissolution of a painful marriage.

The clinical syndromes introduced to the Committee included Child Sexual Abuse Accommodation Syndrome (Summit cited in Freyd, 1996), Parental Alienation Syndrome and False Allegation Syndrome (Gardner & Underwager, cited in Armstrong, 1994), False Memory Syndrome (Gardner and Underwager cited in Armstrong, 1994; Freyd, 1996) and the "addictive dance of death" of "violence prone women" (Pizzey & Shapero, 1982). Gardner and Underwager's work on Parental Alienation Syndrome and False Memory Syndrome has been primarily with alleged perpetrators of sexual and/or physical abuse involved in civil and criminal court cases. Gardener's and Summit's conclusions, arising out of their work with the specific client populations have not been replicated by clinicians and researchers working with similar client populations and some clinicians reject outright the proposed syndromes. Conte, Associate Professor at the University of Chicago, School of Public Administrators (cited in Armstrong, 1994), holds that Gardner's Sexual Abuse Legitimacy Scale is "probably the most unscientific piece of garbage I've seen in the field in all my time" (p. 141). Both Gardner and Summit subsequently have expressed concern about over use and/or misinterpretation of their clinical observations and theoretical constructs (Armstrong, 1994; Freyd, 1996; Gardner cited in Special Joint Committee on Child Custody and Access Report [1998] For the Sake of the Children). In addition, Underwager and Gardner have made statements that make their theoretical constructs suspect. Underwager is widely reported for his pro-paedophelic statements (cited in Freyd, 1996). Armstrong (1994) cites Gardner's statements which hold that paraphilias including paedophilia serve "procreative purposes .... sexualizing pre-pubescent children and lengthening the span of procreative capacity;" (p. 227) and Underwager's statements that women are jealous of male love and bonding including "paedophelic sex" (p. 241). Finally, Gardner's writing is strongly anti-woman. He states that, the claims of women who refuse joint mediation due to violence, are somewhere "between fabrication and delusion" (cited in Dennis, 1998, p. 339). Thus, Gardner denies the well documented threat of escalated wife battering in the context of divorce actions.

The Battered Woman Syndrome (Walker, 1989) has been widely researched and has been recognized by the courts. It has much in common with the Dutton and Painter (cited in Dutton, 1995) construct of "traumatic bonding" and Freyd's (1996) description of "betrayal traumas" which account for failure to acknowledge, disclose and/or report abuse and, in addition, in some cases, to "identification" with the aggressor/abuser. This research (Dutton, 1995; Freyd 1996; Walker, 1989) stands in contradiction to Pizzey and Shapiro's (1982) unverified construct of the "addictive dance of death."

Research evidence reveals that violence (sexual and physical) marks the lives of many Canadian families including those separating and divorcing. Reports of widespread "false allegations" are but an attempt to once more deny the incidence of violence that occurs in the home and the suffering engendered by such abuse.

Overall, research documents the significant incidence of abuse that occurs in the home and reveals that for the most part, men are the perpetrators. Research evidence also indicates that statements about the high incidence of false allegations of abuse (sexual and/or physical) are inaccurate. Allegations that vicious, vindictive and spiteful women are destroying men and their children's relationships with their fathers, are unsubstantiated. Research evidence indicates that false denial and recantation are far more prevalent than false allegations and true recanting of abuse allegations. Allegations that women are as abusive or as dangerously abusive as men are inconsistent with the facts as revealed by empirical research. Nevertheless, one must not discount the suffering engendered by violence, whether perpetrated by men or women and by false allegations and wrongful denial of access. Therefore, each case must be examined on its own merits, recognizing that men, as well as women, can be violent and/or make false allegations and deny access. Unfortunately, the Joint Committee fell into the trap of gender bias against women, holding that "fathers" wrongfully accused have difficulty proving their innocence. Many questions arise in the context of that statement, including: Are mothers never falsely accused, that is, do fathers never make false accusations? Is it easier for mothers to prove their innocence or are they always guilty as charged? In a spirit of true gender neutrality, the concern would have been better stated as "parents wrongfully accused have difficulty…." In this way, some members of the Committee failed to weigh research evidence and relied instead on emotional, anecdotal evidence that was not subject to verification.

Conclusion

This century has seen parental rights come full circle. At the beginning of the century, fathers had absolute rights to children of marriage. In the middle of the second decade of the century, paternal and maternal equality in situations of marriage were recognized so that a father could not make arrangements for the care of his children without the mother's consent. Within the context of increasing focus of child development and on children as different from adults, and changing economic structures, the principle of "maternal" preference emerged so that mothers retained custody of children of "tender" years. These custody arrangements mirrored the social reality of mothers as primary caregivers and replaced the paternal prerogative in child custody matters. During the middle decades of the century, the principle of "the best interests of the child" replaced the principle of "parental" rights. During this period, women's roles as economic actors and claims as citizens were strengthened. Mothers, for the most part, remained primary caregivers during marriage and, in cases of divorce, retained custody of children because fathers rarely sought it. Fathers, on the other hand, were required by the state to pay child support.

In the last three decades of this century, sexual and physical violence in the home was "discovered" and came onto the public agenda. However, until the 1990s, spousal abuse was not, and could not, be considered as relevant to determining access and custody arrangements.

In the face of increasingly punitive measures to increase and enforce payment of child support, fathers' rights groups were formed. In response to enforcement of child support orders, they demanded enforcement of custodial and access orders, as they held that denial of access was widespread. They decried the research which documented domestic violence, including wife battering and child sexual abuse (incest). In addition, research in the 1980s focussed on the effects of divorce on children. Increasingly, fathers petitioned for custody and were successful in approximately 65 percent of cases. By the late 1990s, fathers' rights lobbyists have become increasingly militant in their demands for "justice." In 1997, Justice Minister Allan Rock, in response to Senators', including Senator Anne Cools' demands, established a joint Senate-Commons Committee to look into issues of custody and access. Hearings were conducted across Canada and oral and written submissions were accepted.

The foregoing review of the Proceedings of the Committee reveals how deeply emotional and divisive issues of custody and access can be. The final Report, For the Sake of the Children, was comprised of one majority and three minority reports. Two of the minority reports commented on, or alluded to, bias in some Committee members.

Central issues in the debate included the status and practice of the law, incidence and impact of violence in the home, fear of false allegations of violence and the portrayal of mothers and women in the debate. These issues will be addressed in order.

The law, as written, is gender neutral and cannot be said to categorically give advantage to one group over another. The law, however, arises out of the public domain, which is characterized by property relationships and competing individual rights and assumes that petitioners before the courts are equal individuals. It does not easily account for inequality and the gendered roles and relationships that characterize the private domain, including roles and relationships of care. Thus, disputes about custody for, and access to, children, are particularly problematic. Both "paternal prerogative" and "maternal preference due to the tender years doctrine" have provided objective criteria on which to base custody decisions. The more recent "best interests of the child" is ambiguous and therefore much more subject to bias. Interpretation may advantage, for the most part, fathers, if economic factors are considered of primary importance. On the other hand, mothers are typically advantaged if the primacy of emotional bonding and nurturing is accepted. Current theories, often ideologically driven, about the "best interests of the child" may inform decisions about custody and access. Thus, research that indicates divorce has a negative impact on child development, and that the child benefits from being parented by both parents, may not take into account such mitigating factors as pre and post divorce conflict, poverty, parental/spousal violence and abuse, and addiction.

Research evidence does not substantiate claims by fathers' rights groups that the law is biased against fathers (and men) as a group. The perception of bias may be a result of fathers' rights rhetoric that "father's don't have a chance" in spite of the fact that approximately 65 % of fathers who petition for custody are successful and that research reveals custodial mothers welcome and encourage ongoing contact with a non-custodial father. Research also reveals that failure to exercise access is more prevalent than denial of access and may be a result of the father's inability to accept the change in his status (and the family) and to move on with his life. Ironically, fathers' rights groups claim to speak for their children when they call for fines, incarceration and loss of custody for custodial parents who are non-compliant with access orders although the courts and law enforcement officers, as well as psychologists and social workers, may hold that such measures do not serve the interests of the child. Indeed, these measures may be detrimental to the child and destructive to the relationship between the child and the non-custodial parent. These claims (that fathers do not get custody of children and that access be enforced even though it may harm the child) suggest a return to the principle of paternal prerogative and the belief that the mother may only have custody if the father agrees.

A second issue that came to the fore in the hearings was that of violence and allegations of abuse. Although violence is gendered, it is not gender specific. Thus women, as well as men, are physically and sexually violent. Nevertheless, the relative destructiveness and lethality of male violence, as compared to female violence, is well documented (one researcher states that an analogous comparison is between a head-on collision and a fender bender). Nevertheless, some members of the Committee supported the view that women are as violent, and as dangerously violent, as men, and/or that most male violence is justified. Theories about male violence hold that it has its roots in patriarchal beliefs of male superiority and right to dominate in the home (church and state), that it is the husbands'/fathers' right and duty to impose their will on, or to correct, women and children in order to have their (fathers') needs met and to maintain the patriarchal social order. The origins of female violence are less well understood because women's violence is rarely studied. Violence against husbands has never received social support and is viewed by (patriarchal) society as an abandonment of one's feminist virtues, and is, therefore, more "wicked" and "evil" than male violence, and engenders rage and outrage. For example, a male Canadian judge in 1995 said, when sentencing a battered wife who had killed her husband: "But it is…said, and this I too believe, that when they (women) decided to degrade themselves, they sink to depths to which even the vilest man could not sink," and went on to compare her behaviour unfavourably to the Nazi extermination of Jews (Dawson, 1998, p. 216). Although presenters to the Committee did not condone violence (male or female), some presenters held that some men were driven to violence, including suicide, by the failure of their wives, the courts and law enforcement officers, lawyers and other professionals, to recognize and honour their claims, including, in some cases, the demand that the marriage continue. Ongoing custody disputes are considered by some researchers as a way to harass and to maintain control of the marital partner. Thus, it may be an extension of the patriarchal belief of the husband's/father's right to impose his will on members of his family.

False allegations of abuse against fathers were held to be in epidemic proportions by fathers' rights presenters. Research evidence does not support such claims and further indicates that approximately one third of all allegations of abuse are made by fathers. In addition, research consistently confirms that significant numbers of women and children are abused in the home. Research also reveals the failure of the majority of victims of both physical and sexual violence to report or to seek medical attention and/or legal redress for the violence they suffer. In the wake of the chaos precipitated by disclosure, significant numbers of victims recant, although 90 % are true reports of abuse. False denials by perpetrators are well documented and are significantly more prevalent than false allegations. Nevertheless, some presenters held that fathers (involved in custody disputes) are like witches in times of the witch-hunts and subject to mass hysteria, in this case generated by "feminists." However, the witch-hunts of old arose not out of hysteria but rather a patriarchal response to women who were wise, were healers and midwives, and women who as wives, did not "know their place;" women (and men) who challenged the patriarchal order. In addition, the invocation of images of witch-burning demonstrates how fathers' rights groups, and other groups calling for re-establishment of the patriarchal prerogative and order, attempt to parallel their experiences with women's historical victimization and subordination. Ironically, the "hysteria" now being created about "false allegations" is such that legitimate claims are dismissed by the courts and family service workers as mere fabrication and manipulation.

Negative images of women characterized fathers' rights presentations, as they and their supporters resurrected patriarchal images of women's dualistic nature and described ex-wives as "evil," "wicked" and duplicitous in their attempts to destroy the father-child bond, and the fathers, themselves, as men. Feminists were held to be "man-hating" with undue influence in service agencies including battered women's shelters and child protection services, and in the professional and legal communities. Research which documented violence and the impact of violence was also dismissed as reflecting "feminist" bias or as "one-sided." Second wives, and in some cases, mothers of beleaguered fathers, were "good" women as they joined their voices against "bad" women, that is, ex-wives and "feminists."

Child-centered and feminist submissions portrayed women as, for the most part, desiring and encouraging ongoing paternal involvement with children. These presenters, nevertheless, raised images of women and children as battered, abused, and sometimes murdered by husbands and ex-husbands. Such women (and children), they held, lived in fear and terror and desired protection from ongoing threat, harassment and violence. Presenters noted that, in their experience with battered women and their children, many mothers wanted their children to have a relationship with their fathers and/or that many children feared abusive fathers.

In summary, this study reveals that 80 – 90 percent of divorce and child custody and access cases are settled more or less amicably. Difficulties that arise in exercising custody and access are for the most part also settled without recourse to the courts. Ten to 20 percent of cases are characterized by high conflict and/or violence. It is this 10 – 20 percent of cases that give rise to diametrically opposing views of the divorce process and remedies required in law and service practice. In this context, the dispute appeared to degenerate into a "battle of the sexes" in the minds of some presenters and some Committee members, although men and women presented on both sides of the debate, and the issue concerned what is best for children. Given the deep divisions within the Joint Committee arising from ideological biases of some Committee members, and from the fact of three dissenting reports, it would appear a less politically driven examination of the issue of divorce and child custody is warranted. Such an examination may need to include an analysis of the effects of pre and post divorce conflict and abuse, the effects of poverty and social marginalization on child development, as well as the causes of parental involvement or absence. Such a study could provide a foundation for laws and social policies that could truly provide for children.

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CHAPTER IV

IN SEARCH OF EQUALITY AND JUSTICE: THREE POLITICAL WOMEN *

> Women's past is at least as rich as men's; that we do not know about it, that we encounter only interruptions and silence when we seek it, is part of our oppression. Unless and until we can reconstruct our past, draw on it, and transmit it to the next generation, our oppression persists.
>
> (Dale Spender: Women of Ideas, 1982, p. 12)

> As women writers share their naming of experience, they forge connections to other women who hear their own unnamed longings voiced, their perceptions of the world and its powers given form.
>
> (Carol Christ: Diving Deep and Surfacing, 1980, p. 7)

Introduction

When Canada was constituted in 1867, women were denied the franchise and the right to hold public office due to a so-called "legal incapacity," a "fickleness of judgement and liability to influence," but it was held that the exception was chiefly out of respect for women, and "a sense of decorum," or "a privilege of the sex" (Edwards v. A.G. Canada, 1928, p. 283). The exclusion also included "the criminal and the lunatic or imbecile as well as the minor" (p. 286). Such provisions encoded the provisions of an 1849 statute of

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* A version of this chapter has been published. Laing (1997, fall). AGATE: Journal of the Gifted and the Talented Educational Council of the Alberta Teachers' Association, 11(2), 2-11.

the Province of Canada which clarified the ambiguity in law and practice in regard to Canadian women's right to vote (Edwards v. A.G. Canada,1930, pp. 131-133).

Although Canadian women obtained the vote in some provinces as early as 1916 (Manitoba, Saskatchewan and Alberta) and as late as 1940 in Quebec, and federally in 1918 - 1920, it required an appeal to the Privy Council at Westminster for women to be accorded the status of full personhood, not only to "suffer pains and penalties" but to "execute rights and privileges." Yet as those wise justices of the Privy Council noted, "Customs are apt to develop into traditions which are stronger than law and remain unchallenged long after the reason for them has disappeared," (Edwards v. A.G. Canada, 1930, p. 134) and few Canadian women have entered or been successful in provincial and federal electoral politics.

Nevertheless, some women, many born to mothers who could not vote and/or did not benefit from the status of "personhood," were elected to the houses of parliament in Canada. This paper will be an exploration of their lives, as detailed in their biographies, to discover what made that participation possible. The question to be addressed through my examination of the formative years of political women's lives is not what the barriers are but instead what was required for these women to overcome the historical, cultural and personal imperatives that excluded women from federal and provincial office.

Marilyn Waring, in her book, Three Masquerades (1996) states, "whoever we are, we women come from and belong to a different political culture. Unlike men, who do not believe there is anything outside or beyond patriarchy, women's lives are spent moving between patriarchy and what Jesse Berard calls 'the female world' "(p. 7).

The lives of Kim Campbell, Audrey McLaughlin and Rosemary Brown exemplify this moving between patriarchy and "the female world." They entered the male bastion of politics and their political work helped to erode the barriers between the private (of home and women) and public (of business, politics and men) domains. Historically, "Women were relegated to the private sphere by biological fiat that, in turn was reformulated with the institutionalization of the public and private domains at the political level" (Eisenstein cited by Brodie, 1991, p. 14). This gendered separation has had a "pervasive and enduring effect on electoral politics, both in terms of establishing the legislative agenda and selecting who would do the representing" (p. 14).

But this separation and gendering has been far from complete and invincible. "Many women, even when barriers were most formidable, have subverted them and made political statements in unorthodox ways. There have always been women who have attempted to raise their voices in the language of orthodox political paradigms" (Rinehart, 1992, pp. 111-112). These voices challenge not only the order of things but the method of governing (Hughes 1989) as well as redefining who are full citizens. The 1929 Privy Council ruled that women, as persons, did not suffer a "legal incapacity" that barred them from full participation in political or public life. The Articles of the Canadian Charter of Rights and Freedom of the Constitution Act (1982) included sections #7: Life, liberty and security of person (p. 63); #15: Equality before and under law and equal protection and benefit of law (p. 64); and #28: Rights guaranteed equally to both sexes (p. 68). In R. v. Morgantaler (1988), the Supreme Court of Canada ruled that to deny women right to reproductive choice ".... is denying freedom of conscience to some, treating them as means to an end, depriving them of their 'essential humanity'. "

Thus women were accorded the status of full personhood in matters of action, integrity, and conscience in the private or personal domain and overcame the contradiction with which society must struggle. As noted by Hughes (1989), "Women and men have lived the most integrated lives possible in a physical sense, but in a political sense they have inhabited different worlds, the one dominant and public and the other subservient and private" (p. 404).

As a caveat to the following examination, it must be recognized that women have a long, but for the most part unwritten, history of social and political activism and influence throughout Canadian society and, furthermore, that women have held elected offices at the local or municipal level since the nineteenth century. The lives of Kim Campbell, former leader of the Progressive Conservative Party and Canada's first female prime minister, Audrey McLaughlin, former leader of the federal New Democrats, and Rosemary Brown, who sought federal leadership of the New Democrats, are studied through their respective autobiographies: Time and Chance (1996), A Woman's Place (1992) and On Being Brown (1989).

These three women were chosen because they came from different generations and different social and economic circumstances. They, nevertheless, each sought leadership of a federal political party and, ostensibly, the highest office in Canadian political life. Their lives are part of our history and heritage and as such can provide guidance and inspiration for women struggling to find their way in life and their place in society. Education is the process by which a society prepares its children to take their place in society. Without women's stories, i.e., women's history, each woman must discover anew her possibilities, so that each woman will "... feel that self-esteem, that confidence, that sense of liberation that men take for granted in encountering their own past and finding themselves central" (Spender, 1982, p. 11).

Their Lives: Brief Overview

Kim Campbell: Time and Chance (1996)

Kim Campbell was born in 1947, the second of two children of Phylliss Cook and George Campbell. Her mother worked while her father attended law school. Her maternal grandmother cared for Campbell and her sister. In 1959, the two sisters, Alice and Avril Phaedra (Kim), were sent to St. Anne's Girls' School. In 1967, Campbell graduated in honours political science from U.B.C. and in 1970, she entered the London School of Economics to major in Soviet studies. In 1975, Campbell returned to teach at the University of British Columbia and recounts the uncertainty and discrimination she experienced in obtaining appointments. She married and subsequently divorced a U.B.C. mathematics instructor. She followed her sister, Alice, into Law School in 1980, at the same time that she ran for a seat on the Vancouver School Board. She was elected and subsequently re-elected and became chair in 1983. In 1983, she accepted an invitation to run for the provincial Social Credit Party and was defeated.

In 1984, she was called to the British Columbia Bar and in 1985, she joined Premier Bill Bennett's office as executive director. When, in 1986, Bennett stepped down as leader of the Social Credit Party, Campbell decided to seek the leadership in opposition to Bill Vander Zalm, Grace McCarthy and Brian Smith, but was unsuccessful. She was elected to the British Columbia Legislature in the 1986 provincial election and in that year she remarried. In the fall of 1988, Campbell resigned her B.C. Legislature seat and sought election as a Progressive Conservative candidate in the federal election.

On November 21, 1988, Campbell was elected to the House of Commons. In January 1989, she was appointed Minister of State for Indian Affairs and Northern Development and in 1990, she became Canada's first female Justice Minister. She was appointed the first female Minister of Defence in January 1993. In the summer of 1993, she became leader of the Progressive Conservative Party and Canada's first female Prime

Minister. In the 1993 federal election, the Progressive Conservative Party was defeated and Campbell lost her seat in the House of Commons.

Audrey McLaughlin. A Woman's Place (1992)

Audrey Brown was born in 1936, the only child of Margaret Clark and William Brown of Dulton, Ontario, "ordinary people" (p. 80). Her father was the credit manager of a local farmers' cooperative, and her mother worked as a part time correspondent for a newsletter. McLaughlin graduated from secondary school at 16 and went into agricultural college. She married at 18 and subsequently gave birth to two children. She took correspondence courses and graduated with a B.A. in 1964. In 1967, she, her husband and their children, went to Ghana to do development work. In 1968, she started work on a Master of Social Work degree and graduated in 1970. She worked with the Children's Aid Society and then the Canadian Mental Health Association in Toronto. She joined the New Democrat Party. In 1979, with her marriage ended and her children grown, McLaughlin decided to move to Whitehorse. In 1982, she ran for city council but was defeated. In 1987, she sought the New Democrat nomination for the Yukon seat in the House of Commons. She won the nomination and was subsequently elected to the House of Commons. In 1989 she sought and won the leadership of the federal New Democrat Party. In the 1993 federal election, the New Democrats lost most of their seats, although McLaughlin retained hers. She stepped down as leader in 1994.

Rosemary Brown: On Being Brown (1989)

Rosemary Brown was born in Kingston, Jamaica in 1930, the middle of three children. Her father died when she was young and she was raised in her maternal grandmother's house by her mother, who married five times, and her grandmother, two aunts, and an uncle, all of whom were social activists, descendants of indentured workers and multi-racial marriages. In 1950, she left Kingston to attend the University of McGill in Montreal. At McGill, she met Bill Brown. She completed her B.A. degree, married Bill, and they moved to Vancouver. Brown encountered racism in both Montreal and Vancouver. The Browns were active in the civil rights movement. Brown's two children were born as she became increasingly active in the peace and anti-racism movements. She worked for the Children's Aid Society and returned to University to complete a Bachelor of Social Work degree. In 1964, she lost a baby girl. She enrolled in the Master of Social Work at U.B.C., worked on a TV open line show and, in 1965, gave birth to her last child, a son. She completed her MSW and continued her work in the Black and feminist movements in the struggle against racism and sexism. She joined the counselling service at Simon Fraser University and, in 1970, took on the work of Ombudsperson for the Vancouver Status of Women Council. She sought entrance to UBC Law School but was denied, she believes, because she was a woman. She ran in the 1972 provincial election as a New Democrat and was one of two Black persons elected. In 1975, she sought the leadership of the federal New Democrat Party and was narrowly defeated by Ed Broadbent. She continued to serve as an M.L.A in British Columbia until 1986. After leaving partisan politics, Rosemary Brown continues to work nationally and internationally for peace and justice.

Their Lives In Perspective

As we examine the lives of these three political women, a number of commonalities of experience emerge. In this section, these will be elaborated and include (1) early childhood experiences and influences; (2) education; (3) parenthood and work outside the home; (4) social activism and gender consciousness; (5) the political climate, or spirit of the times in which they lived; and beyond these external forces (6) the personality of each woman herself. As Campbell (1996) notes, "... I am a product of many forces and experiences, not the least of which is that ineffable quality we know as individuality" (p. 5).

This work is based on an analysis of each woman's autobiography. The similarities in their lives were derived through an intuitive process that involved examination and re-examination of the material presented in their autobiographies. This study is limited as it did not allow for a semi-structured interview process that would have allowed for interrogation of the impact of influences and experiences. It is further limited inasmuch the subjects of the study did not have an opportunity to read and comment on the findings outlined in this treatise.

The first influence to be addressed includes the context for their political development including family and early childhood experiences. Each woman delineated a happy childhood in which she felt loved, but their childhoods were not without sorrow and loss. McLaughlin's mother was diagnosed with cancer at the time of her birth and mother and child were separated. Brown's "doting" father died and Campbell's mother, her refuge, left her father when Campbell was 12. In their biographies, the three women present images of strong nurturing women and mothering women, women who took risks and modelled lives of courage, strength, independence and, to varying degrees, non-conformity. Campbell (1996) describes her mother as "loving," "giving her children a love for poetry and language" and a sense of being "self-sufficient and confident about taking on new tasks" (pp. 11-12). McLaughlin (1992) states she came to see her mother, who developed her artistic talent and was the first woman elected to the local town council, "as a doer not a sitter" and "unusual for her time" (pp.79-80). Brown (1989) recounts the profound influence of her grandmother, and her aunts, Lil and Gwen, and states that because of their influence, "I find it difficult to imagine a time when I will ever be able to turn my back on any struggle for dignity or human rights anywhere ... all those tough, strong, independent women who opened doors for me to walk through, and who by their lives set standards for me to live up to" (p. 17).

Brown and Campbell recall that, as children, they loved to "perform." Brown (1989) particularly loved words, language and ideas and, as well as loving to read, she listened to the radio, the BBC, and out of her love for debate and rhetoric, to "... preacher, politicians, teachers and lawyers ... anyone who was eloquent" (pp. 4-5). McLaughlin (1992) recounts being described as an introvert, a child who loved books and was a "teller of tales" and fantasized "adventures in exotic lands" (p. 79). Nevertheless, each woman, in adulthood, experienced self doubt.

Education was an important factor in the lives of the three women. For Rosemary Brown and Kim Campbell, a university education was a given. Audrey McLaughlin, too young to go to University, nevertheless went to an agricultural college and entered University as a young mother at the age of 20. All three had aspirations of advanced education and each encountered gender barriers. Kim Campbell was told women could not be doctors. Audrey McLaughlin was cautioned against full-time study and Rosemary Brown was denied entrance to law school as a result of differential entrance criteria. In this context one is reminded of the response Bertha Wilson, a future supreme court justice, received in the 1950s upon her application to law school by the then dean of Dalhousie law school. "Have you any appreciation of how tough a law course is? We have no room for dilettantes. Why don't you just go home and take up crocheting?" (Jobbs, 1991, p.22).

Nevertheless, they persevered and obtained graduate degrees. McLaughlin and Brown, however, raised families and worked in the paid labour force before re-entering University for advanced degrees. The emphasis placed on education by Brown's family is clear, for Campbell it was a progression that was also interrupted with years of teaching but not without experiences of frustration, discrimination and disenchantment. Beyond formal education, all three women report being voracious readers influenced by the writings of prominent people. Kim Campbell remembers reading Winston Churchill's memoirs, and Audrey McLaughlin, John Washington Carver's and Albert Schweitzer's. Rosemary Brown reports the influence of Angela Davis, Sojourner Truth and Mary McLeod Bethune. Brown also notes the profound impact of Friedan's Feminine Mystique and French's Women's Room, and McLaughlin also reports reading Friedan's work. Each woman saw education as preparing her for greater service to others.

The third influence affecting these women's achievement includes parenthood and work outside the home. Brown and McLaughlin, both mothers, continued their education and worked outside the home, while raising their children. Campbell, although married but not a mother, continued her career. Nevertheless, each woman noted the influence of the significant male in their lives on their aspirations and choices. Brown (1989) notes, "So there I was, an adult in my final year at university who was willing to go anywhere, study anything, depending on which man I thought I was in love with at the time" (p. 39).

McLaughlin entered politics after her children had grown and her marriage ended. Brown entered partisan politics when her youngest child was 6-7 years old after discussion with her husband, and Campbell joined her husband in her first foray into politics.

A fourth influence, an influence identified by Brown, Campbell and McLaughlin, was the social activism of the 1960s and 70s. Only Brown was born into a politically active family; however, all three women participated in the activism of those decades-- the anti-war, anti-nuclear protests, and the struggle against racism and sexism. Campbell (1996) states, "Consciousness-raising became a big part of the political movement of that time" (p. 29).

In addition, Brown, Campbell and McLaughlin experienced, in their personal lives, and witnessed, in the lives of women and children with whom they worked, the loss of opportunity, the inequality, and the injustice inherent in a sexist (and in Brown's case, racist) society. Brown struggled with the tension between anti-racist and anti-sexist activism and held that sexism is present in the anti-racism movement and racism present in the "white" feminist movement. These experiences gave rise to a sense of solidarity with women, a sense of commonality of experience with other women, a commonality of experience because they are women. This "gender consciousness" gave rise to their passion and commitment to political activity as an instrument for change throughout society. Rinehart (1992) notes that "Gender consciousness is the form of much of women's politicization, and it can be seen apart from structural and socialization considerations" (p. 143). They saw the interconnectedness of the oppression of women, of racism and sexism, resulting in poverty and suffering. Brown (1989) states "... unless the women's liberation movement identifies with and locks into the liberation movement of all oppressed groups, it will never achieve its goals" (p. 87). Campbell, cited in Sharpe

(1994) states "I was raised to be a feminist, ... what unites us is our passion for equality and making the *reality of women* (italics added) a part of the consideration for institutions, government and society" (p. 21). McLaughlin (1992) states:

> I believe that feminism and social democracy are inextricably intertwined. Both strive for equality and fairness throughout society, to reduce unearned and undeserved disparities between people... and men have every bit as much to gain from the feminism vision as women do. (p. 217)

Their feminism includes not only changes in society but changes in how power, including political power, is to be used. Each woman speaks to the issue of power and provides a model of difference. Brown (1989) states, "(F)or feminists the whole point of moving into power arenas is to revolutionize them rather than using them as a stepping stone to personal and private advancement" (p. 228). McLaughlin (1992) states, "I wanted to play a role in changing the political culture of the party and country" (p. 53). These statements reflect Christ's (1980) observation that "many women seek new visions of power and personhood and do not wish to become like men in their struggle for equality and justice" (p. 140).

Brown, Campbell and McLaughlin also experienced and participated in similar political and social milleaus.

The political climate or zeitgeist of the 70s was one of unrest, challenge and change, and offered opportunity and support for women (and other marginalized peoples) to move into the public and political spheres. In the United States, Black people inspired by Rosa Parks, who refused to go to the back of the bus, and led by leaders such as Martin Luther King Jr. and Malcolm X marched for an end to discrimination and for freedom and justice. In Canada, the peoples of Quebec, led by Rene Levesque, called for greater autonomy and sovereignty-association. The anti-nuclear testing and anti-Vietnam War movements, across Canada and the U.S., challenged the rights of the military establishment and the power of the state to impose its agenda on an unwilling public. Voice of Women, in Canada, led a successful protest against above ground nuclear testing and facilitated meetings between American and Vietnamese women. Preservation of a life sustaining global environment came into focus with the formation of the Club of Rome and books like Rachel Carson's Silent Spring.

In time, women involved in these movements turned their attention to the needs of women and children. Canada's national magazine, Chatelaine, under the tutelage of Doris Anderson, raised many issues affecting women's lives, including violence, pensions and wages, and divorce settlements. Rape crisis centres and shelters for battered women were established. Feminist writers and artists gave voice to women's experience, offered a feminist analysis of society and theory, illuminated women's role in history and their art, music, philosophy and science. Attitudes, laws and institutions reflected the growing legitimization of women's reality and aspirations. Even the language of discourse changed such that "inclusive" language was adopted.

In this political climate, Brown, Campbell and McLaughlin grew into and embraced feminism and political action. McLaughlin and Brown, their radical feminism established, were encouraged and supported by women in their bids for public office and leadership. Nevertheless, their feminism and their challenge to traditional politicians (and politics) resulted in the displeasure and opposition of the male power brokers. Campbell, less radical in her feminism, also supported by women, was encouraged and groomed for leadership by the Prime Minister.

The final consideration lies in the qualities of personality shared by Brown, Campbell and McLaughlin. As has already been noted, these women displayed, from early childhood, qualities such as curiosity, intelligence and imagination. A sense of humour is also noted in each woman. Brown (1989) states that her sense of humour was her saving grace as a child "... I laughed at myself and pretended not to take myself too seriously" (p. 4). About McLaughlin, Sharpe (1994) writes "... everyone who knows McLaughlin considers her to be ... extremely funny" (p. 32). Campbell's humour was often misinterpreted. Sharpe comments about a particularly scourging attack on Campbell. "But any fair reading ... shows that Campbell was often joking, sometimes at her own expense" (p. 20). Each woman noted struggling with self doubt overcoming it and/or acting in spite of it. "Still, I was committed to be an advocate for women when I could" (Campbell, 1996, p. 122). McLaughlin (1992) states, "(D)uring my life I've taken on challenges that looked difficult or impossible at the time. Yet over and over again I've succeeded in meeting them" (p. 223). Brown (1989) recounts, "(S)erious thinking led me to acknowledge my secret feeling of always being under-qualified for any task that confronted me" (p. 158). McLaughlin (1992) concludes, that to overcome this self doubt, "They (women) have relied greatly on other women for support and have sought strong female role models to balance persistent images of women as weak, childish, irrational, not serious" (p. 199). Not only was their activism supported by women, but it was in the service of women. Each woman demonstrated passion and commitment that grew out of her capacity for empathy and understanding of other peoples' realities, a sense of oneness with those they represented, as expressed by Brown (1989) in her leadership bid:

> And as I spoke of ending poverty and creating equality, I was emboldened and strengthened by the hopes and dreams we have for the country; my voice was clear and my words firm, ... for all the women, Black people, poor and voiceless who had inspired me to champion causes and enter public life in the first place. (p. 184)

Like the rebel described by Camus (1956) their acts were not "... essentially ... egoistic" but acts of identification with other women (and marginalized people). They were able to overcome self doubt and "surpass" themselves in the service of those others.

Conclusion

> As we go marching, marching we battle for men,
> for they are women's children
> we mother them again.
> As we go marching, marching we bring the greater days.
> The rising of the women means the rising of the race.
> -James Oppenheim, 1912
> "Bread and Roses"

This marching song, Bread and Roses, was inspired by the 1912 strike by women textile workers. They were protesting working conditions and rates of pay. Bread and Roses is still sung when women and men come together in the ongoing struggle for women's equality and, thus, the song speaks to the issues raised in this chapter.

Women's stories and their participation in history until the last quarter of the twentieth century have been held in silence, a silence that represents, recreates and sustains women's marginalization and oppression. In writing on colonized people, Memmi (1991) states, "[the colonized] is in no way a subject of history... Of course he carries its burden, often more cruelly than others, but always as an object" (p. 93) and, further, "(T)he fact is that the colonized does not govern. Being kept away from power, he ends up by losing both interest and feeling for control" (p. 95). The stories of the women studied speak to personal and social factors that made their entrance into the centres of power possible, and demonstrate what is necessary to overcome the societal barriers of oppression and marginalization.

In this section I will address what we, as a society, can do so that, for all female children, full participation at every level of society is theirs by right. We know the importance of role models. In school we study history to inspire us and provide models of achievements and heroes, but it has been a limited history, a history almost exclusively of male achievements in science, in fiction, and of male heroes. Our education must now include the women of history, their achievements and their progress, their stories, and their heroes. For example Canadian history courses should include a study of the enfranchisement of women and their struggle for equality. Women need models of historical women for "without [women's] stories, a woman is lost when she comes to make the important decisions of her life. She does not learn and value her struggles, to celebrate her strengths, to comprehend her pain" (Christ, 1980, p. 1). Women must be brought into history to guide and inspire those who would make history, for the measure of a great woman is not "man."

We must also challenge the role of education. For the most part, the goal of education has been to transmit knowledge and values to preserve social order and maintain the status quo. The words, stories and theories of education have been, for the most part, "womanless." Spender (1983) states "I followed women's silence in education and I followed women's silence in the encoded knowledge of our society" (p. 2). It is a silence permeating the education of the oppressed peoples, such that "(O)ne of my former schoolmates told me that literature, art and philosophy had remained foreign to him as though pertaining to a theoretical world divorced from reality" (Memmi, 1991, p. 105). As educators, we must challenge this silence, this exclusion, and name the political nature of education. We can learn from Audrey McLaughlin (1992), who stated that, while in Ghana she discovered the built-in cultural bias in every educational system and the cultural relativity of "truth."

We must challenge the silence and the exclusion. For example, the classic works on oppression and rebellion, including The Colonizer and the Colonized (Memmi, 1991) and The Rebel (Camus, 1956), fail to take into account women's oppression and rebellion as members of oppressed groups and as an oppressed group. As educators, we must enter into dialogue with our students about this exclusion and formulate alternate models and theories that include and or delineate women's experiences and language. In practice, educators need to make explicit implicit assumptions about roles, gender and power, embedded in thought and language. We must be ever vigilant to our own unspoken beliefs and values that may limit our vision for our students. We need to help women reclaim their language, their definition of themselves. We need to dialogue about equality, about an equality that includes all members of a community, a nation and even the world. Education must foster creativity as well as competency, questioning as well as acceptance, and dreaming as well as reasoning.

We must challenge dominant psychological and sociological theories. Jean Baker Miller (1981) states:

> ... we end up with some strange theories about the nature of human nature. These strange theories are, in fact, the prevailing theories in our culture. One of these is that 'mankind' is basically self-seeking, competitive, aggressive and destructive. Such a theory overlooks the fact that millions of people (most of them women) have spent millions of hours for hundreds of years giving their utmost to millions of others. (p. 69)

We must also challenge traditional theories of child development. The ascendent theories propose a course of development that involves individuation and separation (Erickson, 1950) but fails to take into account that development takes place in the context of nurturing relationships. Developmental theories hold "man as the measure of all things" and fail to acknowledge or address women's developmental milestones in the course of development of the capacity to care and nurture (Gilligan, 1982). Similarly we must challenge traditional theories of ethics and values as founded in an individualistic and competitive ethos. Gilligan (1982) challenges Kohlberg's theory of moral decision-making and of justice based in competing rights. Gilligan presents an ethic of care and responsibility that more closely reflects the factors that inform women's moral decisions.

As Gilligan (1982) notes:

> The failure to see the different reality of women's lives and to hear the differences in their voices stems in part from an assumption that there is a single mode of social experience and interpretation. By positing instead two different modes, we arrive at a more complex rendition of human experience which sees the truth of separation and attachment in the lives of women and men and recognizes how these truths are carried by different modes of language and thought [and action]. (p. 174)

We need to value not only individuation and separation, but intimacy and commitment. In the end, we must redefine what it means to be "human" so that the circle of humanity includes women as well as men, the poor as well as the rich, the underprivileged as well as the privileged, the rebel as well as the conformist. Riane Eisler (1995) calls for a new definition of courage:

> ... a courage that at its most basic level is rooted in caring for others, be it for those we love or even total strangers; the courage to stand up to injustice... it takes far more courage to challenge unjust authority without violence than it takes to kill all the dragons and monsters that populate all those stories still told to our children about what it means to be brave. (p. 393)

It is the courage to stand against what is, to create what can be, the courage of the rebel, the courage of Rosemary Brown, Audrey McLaughlin and Kim Campbell. These women were taught they could be independent and autonomous, that they could reject cultural stereotypes, live fuller lives, and work to create a more humane and just society. Perhaps the most important lesson we can model and teach is belief in oneself and that each individual can make a difference.

Thus we can learn from these women's lives, the role educators can play in the lives of girls and women, such that they will pursue their aspirations unfettered by cultural and social values and institutions. If educators and counsellors are to aid the gifted young women they encounter, they too must understand and embrace women's history and possibilities. The women whose lives are studied through their autobiographies provide role models and guidance and must be included in school curricula and libraries. In addition, those individuals of influence in young women's personal lives, including teachers and counsellors, need to open up possibilities, to encourage and support the pursuit of those possibilities.

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CHAPTER V

CONCLUSION

> It remains a matter, for men and women both, to establish a place for freedom in the world of the given – and to do so in concern and with care, so that what is indecent can be transformed and what is unendurable may be overcome.
>
> (Greene, 1988, p.86)

Introduction

For the past 150 years, Canadian women have struggled for political, social and individual autonomy, equality and justice. Their struggle has been against patriarchal structures and hegemony that hold that women are morally and politically inferior to men and that they rightfully occupy the "private" domain of human affairs and activities. As such, women have been subject to supervision by men including fathers, husbands and/or the state due to their more "natural" rather than "civilized" status. Twentieth century women's struggles have occurred in the context of rapid political, social and technological change.

Political challenge to colonial imperialism occurred as colonized and dominated peoples struggled to gain, or regain, their freedom and right to self-determination. The civil and aboriginal rights movements and the peace and environmental protection movements challenged the state's right to impose its will, structure and policies on its peoples. Feminism is a further struggle against traditional political structures. Feminist women have struggled not only for rights and claims as free and autonomous individuals in the public domain but also for recognition of their claims arising out of their reproductive labour and relationships of care in the private domain.

The philosophical foundations of modern society, which had their origins in the Enlightenment, were also challenged. Philosophies of language, including those of Cassirer (1953, 1962) and Langer (1974), delineated the human origin of symbolic systems, including language, and the capacity and need to create meaning. Psycholinguists and phenomenologists such as Merleau-Ponty (1970, 1973) described the constitutive nature of language in focussing perception and in making the "invisible" visible through the act of naming. Marxist psychologist L. Vygotsky (1962) theorized about the relationship between language and thought, holding that language, social in origin, is internalized such that social knowledge and structures become psychological. Kuhn (1962) and Hoyningen-Huene (1993), philosophers of science, elaborated on the social origins of scientific knowledge and methods and thus further challenged the immutability of knowledge and truth.

Writers of the colonial experience (Friere, 1970; Memmi, 1991) described the construction by colonizers of colonized (aboriginal and conquered) peoples (men) as people in a "state of nature" and as innately inferior to the "civilized" colonizers and their ways. Memmi (1991) elaborated on the internalization of belief in this inferiority by both the colonizers and colonized, and its transformation into self-rejection and hatred by colonized peoples. Robertson (1970) and Campbell (1973) provided case studies of the impact of colonization on Canadian aboriginal peoples, including women.

Daly (1973) detailed the misogynistic images of women perpetuated by patriarchal religions and social structures. In the 1970-80s, feminist scholars described the social (male) construction of women and explored how "man"-made reality and language excluded women, as they are, in their being, their knowing and their aspiration, and excluded women from human history (Christ, 1980; deBeauvoir, 1974; Spender (1982). Gilligan (1982) and Miller (1976) proposed visions of justice that included an ethic of care (arising from the private domain) in contrast to the traditional view of justice as balancing competing rights (that characterized the public domain).

Scientists, in their quest to "know" and "conquer" nature, have developed the technologies to explore the far reaches of outer space as well as to image the "inner" space of the human body and brain. Part of this quest is the desire to objectively understand the origins of life, and ultimately to be able to create life. As such, this "male"-centered science and technology poses great threat to women in their capacity of bearing and nurturing life, because these theories and practices are "… grounded in men's existential separation from species continuity rather than women's integrative experience of birth" (O'Brien, 1999, p. 83), and reflect men's existential and philosophical separation from nature.

In this context, women's early struggles for equality rights have mirrored men's historic struggles for political inclusion. However, this early struggle, grounded as it was in patriarchal institutions and discourse, lacked images and metaphors for women's experience in the private domain, including the embodied experience of giving birth and nurturing life. Thus, in some cases, women's claims as women were undermined. Smart (1997) states, "We know enough that some of the good legislation we or our foremothers pressed for has not produced the desired goals" (p. 115) and notes that the rhetoric of rights in the area of social policy making is now being "…taken up and used extensively and compellingly by men against individual women" (p. 113).

Post modernism, with its focus on the "social" construction of knowledge and experience may advance the feminist analysis but may also undermine women's struggles against oppression and injustice (Eisler, 1995; Mikhailovich, 1996). Mikhailovich (1996) holds that "Post modernism as a theory rests firmly on the foundation of a long line of patriarchal practice" (p. 343), and, as such, may promote a kind of cultural relativism or ethical nihilism which maintains the status quo.

This work consists of three case studies and tells the stories of women's struggles for recognition of their political claims and personal rights. These case studies demonstrate that all women, regardless of class, race, ethnic or aboriginal status, and ability or disability, may have their claims, as citizens and as persons, denied due to the marginalization or denial of their interests by a patriarchal society including its laws and institutions. Historic images of women's inferior status and duplicity may be invoked to limit their citizenship claims. Legal and social practice founded in a patriarchal consciousness devoid of images, and metaphors of women's relationships of reproductive labour and care, may limit or deny their personal claims.

The first case study focuses on the struggle by one of Canada's most marginalized women to exercise her citizenship claims as guaranteed by the Charter of Rights and Freedoms. The second case study demonstrates that all Canadian women are subject to threat to their personal claims by patriarchal social institutions that construct a particular human conflict from the perspective of the male participants engaged in that conflict. Finally, the third case study elaborates on the internal and external forces that support and limit women's pursuit of political office.

Holding Back The Darkness

The first case study, CFS v. DFG: Holding Back the Darkness, focuses on the struggle of DFG, a woman marginalized by factors of racisim, classism and sexism. She was further marginalized by the continuing forces of patriarchal colonialism and oppression.

In 1996, a young aboriginal woman, DFG, pregnant, living in poverty and suffering an addiction to glue sniffing, was ordered by the Manitoba Court of Queen's Bench into a Winnipeg treatment centre in order to "protect" the well-being of the fetus she was carrying.

Winnipeg Children and Family Services (CFS) held that the state had "parens patriae" jurisdiction over her unborn child and, in addition, held that DFG was suffering a mental illness and was therefore "incompetent". The Manitoba Court of Appeal stayed the order and DFG was released. She nevertheless voluntarily stayed in the treatment centre, which had denied her admission prior to the intervention by CFS, and subsequently delivered a reportedly healthy baby. CFS appealed the court decision to the Supreme Court of Canada, which ruled in 1997. In a split decision, the majority of Supreme Court Justices held that the interests of the fetus and the mother are "indivisible," whereas a minority of the Justices held this "indivisibility" was an anachronism in the context of modern medical knowledge and technology.

This case demonstrates the impact of the forces of patriarchal colonialism, state paternalism and neo-conservatism, and neo-liberal and empiricist science on one of Canada's most marginalized women. Patriarchal colonizers robbed aboriginal women of their power and status and vested their property and authority in aboriginal men at the same time that all aboriginal peoples were denied "citizenship" status and rights and marginalized onto reserves. The Indian Act of 1876 served the purposes of the white colonizers and included a form of cultural genocide by exclusion of women, who are teachers of culture and tradition, from the circles of power. In addition, aboriginal women, who married white men, and their children, lost their aboriginal status and rights. Through commitments to "protection," "assimilation" or cultural genocide, aboriginal children were taken from their parents and placed in residential schools to learn the Christian religion, the dominant language of English and French, and "white" ways. That many of these children also suffered emotional, physical and sexual abuse at the hands of their teachers and the "white" clergy, is now well documented. In the name of caring for and protecting children, the paternalistic state subsequently apprehended children from aboriginal mothers, many of whom had been raised in residential schools and who were deemed to be "unfit" due to conditions of poverty and/or violence and/or addiction and/or racial stereotyping. These children were placed for adoption in "white" homes throughout Canada and the United States. Aboriginal mothers were without voice or silenced, and aboriginal men, until the 1980s, were silent.

In this historical context, DFG, as a teenager, became addicted to "glue" and gave birth to three children, two of whom reportedly suffered "fetal alcohol syndrome" (FAS), although conditions of poverty, violence and stress give rise to "syndromes" indistinguishable from FAS. Indeed, the link between substance abuse as a singular cause, and FAS, is unproven. The paternalistic state, which had failed to protect mothers from conditions of poverty and violence, and had failed to provide adequate and appropriate treatment resources for aboriginal women suffering addiction, nevertheless, intervened to protect the fetus from its so called "unfit" or "reckless" mother. Advancing medical technologies which image the fetus as separate from, and independent of, the mother were used to support the state's claims. Stereotypes of women, and particularly aboriginal women, as deficient, were invoked as were the rights of the unborn. In this context, a duty to care was imposed on the mother by patriarchal political institutions. Equality sections of the Charter and the common law, which hold to the indivisibility of mother and fetus and accord citizenship claims only to persons "born," were invoked by DFG and her supporters. Women's groups, as intervenors, decried the construction of a maternal-fetal rights conflict which would result in fetal rights being given priority over maternal rights. In addition, it was held that all women, pregnant or of child-bearing age, could be subject to constraint by the state, in order to protect the fetus or any "potential" fetus from harm.

Political response was limited; however, the media, in reporting the case, for the most part, constructed the issue in adversarial terms of competing rights and failed to acknowledge the unique relationship between mother and fetus, a relationship in which the well-being of the fetus and mother are intertwined. It is a relationship unlike any other human relationship and therefore poses exceptional challenges to the courts and political institutions. This case demonstrates that an atomistic and empirical science and an individualistic moral framework fails to provide an adequate model of justice and equality for women as mothers. It points to the ongoing feminist struggle and need for women's voices in politics, social policies and science. In addition, it highlights how western philosophical discourse is androcentric.

CFS v. DFG demonstrates that the ontology of male individualism and rationality, which emerged during the Enlightenment, excludes women from its understanding of human nature, and does not acknowledge or account for women's nature and their relationships of care in the private domain. In that period, political and moral philosophers constructed a model of human nature founded in the activities and relationships that characterized the "public" domain. These philosophers constructed "man's" nature as essentially individualistic, egoistic, self-serving and competitive. Similarly, Enlightenment philosophers held that peoples living in a state of nature, that is "primitive" or "savage" aboriginal people, were to be subdued and controlled or "civilized" through "reason" and collective power and authority as vested in the "state." This construction gave rise to a number of dualisms including man-women, society-nature, mind-body, and abstract-concrete. Women were seen as part of nature, as deficient in reason, and were to be subdued and controlled by man and therefore could not be citizens. This reflected and justified the patriarchal construction of women as morally inferior to men and thus necessarily subject to patriarchal domination in the church and in the home. Patriarchal ideology historically obscured and mystified the mother-child relationship, holding that the father's (male's) seed (complete in itself) is planted into the mother's (female) body and after a period of incubation, emerges as the child which is an extension of himself and his property (as is the mother/wife). Thus, it was held that the mother had no interest in, or claim to, the child. Advancing scientific knowledge has changed our understanding of human reproduction and these historical constructs have been abandoned. The mother's genetic relationship with the child is now recognized. However, an individualistic ontology does not recognize these relationships and continues to construct the father, the mother and the child as independent entities, although the child and father may become as one in their claims against the mother.

The epistemology of the Enlightenment, in which reason replaced revelation as the source of truth, gave rise to the similarly atomistic, or individualistic and objective science of empiricism in which discrete and decontextualized units of data were subject to observation and measurement. That which could not be seen was deemed to not exist. Wisdom (particularly women's healing and birthing wisdom) was replaced by scientific knowledge as the ancient healing arts were "professionalized" into the practices of medicine and pharmacology. The mother-child bond/relationship was rendered invisible, and birthing, like parenting, became a male prerogative. The mother/child relationship, demonstrated by current biological sciences, has again been sundered, and rendered non-existent by advancing imaging technologies which present the fetus as a separate being "nesting" inside the mother. Current ontological and epistemological constructs provide no analogies for the biological and social relationship between mother-fetus-child because, until this century, the paternal-child relationship was constructed as economic and absolute and the mother-child relationship, invisible. However, the mother-child relationship, now constructed, is one of duty to care, but not of rights. It is noted that no such duty to care is imposed in any other context. People are not required to donate organs to dying relatives (or strangers) and even the organs of the dead cannot be "harvested" without consent. In the context of this case, the "rights" and interests of the fetus are constructed, by a patriarchal science and politic, as separate from, and in competition with, those of the mother, but may be of interest to the patriarchal state in the stead of the biological father who may be required to protect the fetus from the mother and her careless behaviour.

The prevailing individualistic ontology provides for construction of the addicted mother as indulging in self-serving, reckless and irrational behaviour requiring correction by the rational patriarchal state (in the absence of the corrective husband/father). Because the current epistemology, founded in objectivity, decontextualizes behaviour, holding any behaviour to represent a choice among many choices available, DFG's suffering, self-hatred and hopelessness as a result of marginalization (due to her aboriginal status, her poverty and the violence she has endured) are invisible to those who would "correct" her behaviour. Furthermore, her attempts to make healthier choices (for herself and her fetus) were thwarted by the patriarchal state's failure to provide adequate and appropriate treatment facilities. Because of the ontological construction of women's behaviour as basically irrational and self-serving unless coerced by outside authority, attempts were made to incarcerate DFG in a treatment centre that denied her voluntary admission. Her concern for the well-being of the fetus was never named and became invisible and judged to be non-existent.

The system of justice that is grounded in the ontological and epistemological constructs of individualism and empiricism is one of competing rights between and among equal citizens of the public domain. It is a construction of justice that does not take into account unequal power and/or relationships of care and dependency which characterize the private domain and/or the lives of oppressed peoples. This case demonstrates that human relationships are ill-served by a construction of competing rights and coercion because through such a construction, the relationship is sundered. Remedies founded in an ethic of care would more rightly be invoked to heal the mother and protect the child.

Preventing Reckless New Laws

The second case study, For the Sake of the Children: Preventing Reckless New Laws, is an examination of the challenges to the relationship between children and their mothers, regardless of race, class or other categories of difference, when separation and divorce occur. The focal point of this case study is the 1997-1998 hearings of the Canadian Senate and the House of Commons Special Joint Committee on Custody and Access. The Special Joint Committee was established in response to fathers' rights lobbyists who appeared during parliamentary study of Bill C-41, an amendment to the Divorce Act, which established mandatory child support guidelines. Fathers' rights lobbyists (both men and women) held that, under Canadian jurisprudence, divorcing fathers were disadvantaged in matters of custody and access at the same time that they suffered great and ongoing financial burdens in relation to their children.

Historically, in patriarchal societies, children of marriage belonged to the father absolutely and became the property of the fathers' male heirs if the father died. In the mid-nineteenth century, Canadian women, of "chaste" character, were accorded limited claims to custody and guardianship of children. Such rights were granted only under particular circumstances including the "tender years doctrine," which held that young children needed to be nurtured by their mothers. By the end of the second decade of the twentieth century, fathers' absolute rights to dispose of children of a marriage during the marriage were curtailed. In addition, increasingly "good" mothers were favoured in case law when divorce occurred through the "tender years doctrine" which came to be known as "maternal preference." In most cases, fathers did not petition for custody. Increasingly, however, the state became concerned that divorced fathers were abandoning their financial obligations, including financial support for children born outside of marriage.

In the second half of the twentieth century, Canadian divorce laws were liberalized and encoded "the best interests" of children as the criteria used to determine custody and access. In the wake of increasing divorce rates and impoverishment of single (divorced and never-married) mothers and their children, legislation to enforce payment of child support was enacted. Due to widespread default on payment of child support, increasingly punitive measures were introduced to force non-custodial parents (usually fathers) to pay. Fathers' rights groups were formed to advocate for men who, these groups held, were being impoverished by child support payments and treated unfairly in matters of custody and access. During the 1980s and 1990s, attention was drawn to violence which occurred in the family, and which included wife battering and paternal child sexual abuse. Shelters for battered women and treatment programs for their children, and children who were incestuously abused, were established and funded. A number of studies on "family" violence and "sexual" abuse were conducted and focussed on male violence. Fathers increasingly petitioned for joint or sole custody and were successful in 60-70 percent of cases. Nevertheless, the fathers' rights activists and lobbyists became more strident, alleging widespread discrimination and false accusation of violence against fathers.

As child poverty became an issue of national concern in the 1990s, the federal government decided to amend the Divorce Act to include mandatory child support guidelines. Although the state has long held custody and access to be separate from financial concerns, fathers' rights lobbyists demanded consideration of custody and access legislation, and the government acquiesced.

Hearings by an all party Joint Committee of the Senate and House of Commons were held across Canada. Written and oral submissions were received. A review of the Proceedings of the hearings and of the report of the Committee reveal how deeply divisive the issues are. Fathers' rights groups and activists made heart-rendering presentations about the wrongs they alleged they had personally suffered. They held that there was a feminist conspiracy among law makers, judges and law enforcement officers and professionals including lawyers, social workers and psychologists, to deny fathers custody of, and access to, their children. This conspiracy, fathers' rights lobbyists held, was founded in the beliefs that men could not nurture and that they are the only perpetrators of violence. They held that the conspiracy against fathers was in the service of man-hating feminist women who were feared by all co-conspirators, and that the conspiracy resulted in widespread "fatherlessness". Fatherlessness, it was held, was the root cause of poverty, drug use and addiction, violence and suicide among children and adolescents. Furthermore, fathers' rights presenters stated that false allegations of abuse were used by mothers to deny men and their children relationships with each other. Fathers' rights presenters called for severe penalties including loss of custody and incarceration for mothers who denied access. These presentations failed to address the importance of the relationship between the mother and the child.

Child-centered and feminist presentations held that 80-90 percent of custody/access disputes are settled outside the courts. They held that the remaining 10-20 percent are characterized as high conflict and/or violent. Child-centered and feminist presentations, for the most part, were made by service providers working with battered women and children. They noted that women could be violent but that their work was with women and children who had been targets of, or witness to, violence. Their presentations focussed on the impact of male violence on women and children and held that legislation and practice must protect children and their mothers from ongoing or escalating violence and harassment. Presenters noted that most mothers, even battered mothers, value and facilitate an ongoing relationship between the father and the children, but noted that some children (and mothers) are afraid of abusive fathers.

A review of the Proceedings indicates bias on the part of some Committee members against child-centered and feminist presenters such that their presentations were forcefully challenged. On the other hand, these same members welcomed, supported and supplemented information given by fathers' rights lobbyists. The final report of the Committee included one majority report and three minority reports. Writers of two of the minority reports noted bias by some Committee members.

Research into legislation and case law does not substantiate the claims of fathers' rights lobbyists. The law is written in "gender neutral" language; 60 to 70% of fathers who petition for custody are successful in getting either joint or sole custody; and research into access reveals that failure to exercise access is more prevalent than denial of court ordered access.

Research into the impact of "domestic" violence reveals that male violence is more dangerous and more lethal than female violence. In addition, male violence occurs in a context in which women suffer economic and social disadvantage. Research indicates that reports of a high rate of false allegations of abuse, particularly sexual abuse, in the context of custody disputes, are inaccurate. Indeed, research indicates that the failure to report abuse and the incidence of false denial is far greater than that of false allegations. Ironically, the Committee chose to challenge those presenters who reported on violence and accepted, without question, those who stated they had been falsely accused. Research indicates that the Committee would have been well advised to have attempted to establish the veracity of statements of presenters who stated they had been falsely accused of abuse.

The issue of custody and access was framed by fathers' rights presenters as, for the most part, one of competing rights, although many fathers' rights presentations were cloaked in a rhetoric of care for children. The mothers' bond with their children was unrecognized as fathers' rights lobbyists focussed on the father-child relationship. Child-centered and feminist presenters focussed on the need to protect women and children from violence. Beyond concerns about violence, the failure to address the unique bond between mother and child may subject children, as well as mothers, to injustice and harm. This case demonstrates how an "individualistic" justice, founded in competing rights, fails to address the complexity of relationships and "rights" in the private domain. It also demonstrates how some women accept the dominant ideology of paternal prerogative and of women's implicit inferiority.

This second case study, that of fathers' rights activists, demonstrates that the legal system, founded in the constructs and values of the public domain, does not represent women's lack of power and their embodied experiences in the private domain. Consequently, all women are vulnerable to suffering the loss of their children, since unequals are treated as equals and relationships of care are treated as either inconsequential or characterized as a "right" within a framework of competing rights.

Although mothers' interests and claims, arising out of mother-child bonding and relationships of care have not been constructed and therefore do not act as constraints on paternal prerogative, the child's interests and rights to that care have been used to limit claims for paternal rights. Therefore, women's concerns arising out of relationships of care are, for the most part, held in silence and do not inform the discourse and practice of our civil justice system. Furthermore, concern for the mother-child bond is absent in the rhetoric of the fathers' rights activists. Smart (1997), reporting on a research project on how parents negotiate child custody, states:

> … a noticeable difference between the fathers and mothers who were in some conflict over their children was the tendency for fathers to speak in terms of legal rights, or the denial of their legal rights, while mothers hardly ever assumed they had legal rights and deployed a completely different rhetoric based on caring or moral claims. (p. 113)

Fathers' rights activists now cloak their claims in a rhetoric of care and children's rights as they decry their loss or denial of legal rights, even though mothers, historically, and in this time, continue to be primary care givers, and "fatherlessness" is only a concern if it is a result of divorce. It has rarely (if ever) been raised to oppose sending young fathers off to work in faraway places or to die in foreign wars.

Fathers' rights activists rely on dominant psychological theories of individuation and individualism, which deny the significance or primacy of the mother-child bond to the child's development into an individual. This relationship (between mother and fetus, infant, child) is characterized by continuity as the single cell grows through the stages of embryo and fetus to emerge, at birth, in the first stage of separation into a separate existence, as an individual whose development and individuation can only occur in that relationship of dependency and care. These images, which include women's experience of pregnancy and child rearing, have no parallel in men's experience, which is a disembodied experience of discontinuity. A patriarchal ideology, an objective epistemology and an individualistic ontology reflects the male experience; therefore these images are absent from deliberations about matters of custody in times of divorce. Thus fathers' claims, founded in paternal prerogative and rights claims, are equated with, or seen as the same as, claims arising out of maternal attachment and care. (As a word of caution, I would note that bonding and attachment after birth do occur in the relationship of care with the primary emotional and physical caregiver, and such attachments may need to be assessed).

At the same time, patriarchy and the ontology founded in "public" domain definitions do not account for, or represent, patriarchal and paternal violence except as a justified corrective measure for wayward women and children, a construction which strengthens claims of women's irrationality and of their moral inferiority. Patriarchal images of women's duplicity and treachery are also invoked to jeopardize mothers' relationships of care with their children. The case study demonstrates how some women have internalized patriarchal images of women, and support the fathers' rights activists' attack on mothers and feminist women. In the absence of feminist presentations and representation of women's experiences and relationships, women's interests and claims would be marginalized and held in silence. An objective and decontextualized epistemology fails to name relationships of care and the gendered nature of violence in the private domain. Indeed, patriarchal epistemologies and research equate male and female violence even though it differs significantly in physical and psychological impact and has different historical and psychological origins. Male violence is often grounded in power and female violence often grounded in powerlessness. This case study demonstrates the need for feminist construction of motherhood and the need for examination of the impact of violence in the private domain.

Three Political Women

The final case study, In Search of Equality and Justice: Three Political Women, is an examination of the autobiographies of Rosemary Brown, Kim Campbell and Audrey McLaughlin. Each of these women sought the leadership of their respective national political parties and, with that leadership, the possibility of becoming Prime Minister of Canada. For a short period of time in 1993, Kim Campbell did hold the highest political office in Canada. This case study of their lives demonstrates the challenges, both internal and external, for women who seek political office, and how the voices of women in our houses of parliament can change the context and processes of political debate.

When Canada was constituted in 1867, women were deemed to suffer a "legal incapacity" which required they be denied the vote. However, in 1916, two Canadian provinces, Alberta and Saskatchewan, enfranchised most women and in 1917 the federal government enfranchised women with relatives involved in the War (World War I) effort. Although Quebec women did not get the vote until 1940, by the end of the second decade of the twentieth century, most Canadian women were enfranchised with the exception of aboriginal women who, in some provinces, did not get the vote until the mid to late 1960s. Some minority ethnic women were similarly denied provincial vote (Arscott & Trimble, 1997). In 1929, the Privy Council at Westminster (England) overturned the Supreme Court of Canada ruling that Canadian women were not persons in terms of rights and privileges and therefore could not be members of Canada's Upper House, the Senate.

Canadian women joined together in 1981 to ensure equality sections of the Canadian Charter of Rights and Freedoms applied equally to men and women. In 1988 the Supreme Court of Canada, in a majority decision, upheld women's rights to "security of person," autonomy and freedom of conscience in matters of reproductive choice.

In this context of historic marginalization and ongoing struggle for women's equality before and under the law, Brown, Campbell and McLaughlin emerged as political leaders.

Rosemary Brown, a black woman, was born in Jamaica in 1930 into a matriarchal family of social activists. She emigrated to Canada to complete her education. She met and married Bill Brown. She was active in the civil rights, peace and feminist movements. She applied to enter law school but was denied entrance because, she believes, she was a woman. As an avowed socialist, she joined the provincial New Democrat Party (NDP) and served as an NDP MLA for 14 years (1972 – 1986). She sought the leadership of the federal NDP in 1975 and was narrowly defeated by Ed Broadbent.

Kim Campbell was born in 1947 to an artistically inclined mother and student father who subsequently became a lawyer. She won a seat on the Vancouver School

Board in 1980, the same year she entered law school. In 1985, she was called to the Bar and became the executive assistant to the Social Credit premier of British Columbia, Bill Bennett. In 1986, she sought the leadership of B.C.'s Social Credit party but was defeated. She won a seat in the provincial legislature in 1986 but resigned in 1988 to seek election as a candidate for the federal Progressive Conservative (PC) party and was successful. Her career in federal politics was characterized by appointment to several cabinet portfolios by then Prime Minister, Brian Mulroney. In 1993, she sought and won the leadership of the PC party and thereby became Prime Minister of Canada. She and her party were defeated in the 1993 federal election some weeks later.

Audrey McLaughlin was born in 1936, the only child of parents who she termed "ordinary" people. Her mother was a correspondent for a newsletter. McLaughlin married at 18, had two children and, in 1964, graduated with a B.A. She and her husband did development work in Ghana, and, in 1967, she returned to school to complete a Master's degree in Social Work. She was a social activist and a feminist. In 1979 she moved to Whitehorse and, in 1982, ran unsuccessfully for city council. In 1987, she sought the NDP candidacy for the Yukon seat in the House of Commons. She was elected in 1988 and, in 1989, sought and won the leadership of the federal NDP. The NDP lost most of their seats in the 1993 election and McLaughlin stepped down as leader in 1994.

An examination of their lives as portrayed in their autobiographies reveals that a number of similarities in early influences, as well as commonalities of experience, emerge, including: (1) early childhood experiences and influences, (2) education, (3) social activism and gender consciousness, and (4) the political climate or spirit of the times. Beyond these "external" influences, all three women display similarities of "personality" including curiosity, intelligence and imagination, a sense of humour and self-doubt.

Brown, Campbell and McLaughlin all reported "happy" and "loving" childhoods that were not devoid of loss (Brown's father died when she was very young) and separation, but which included loving, nurturing mothers who modeled lives of courage and independence. Each woman remembered herself as an imaginative child who loved "words" and reading, and who engaged in fantasy and drama.

All three women aspired to higher education and each encountered barriers. Campbell was told women could not be doctors and McLaughlin, as a young mother, was cautioned against full-time study. Nevertheless, each persevered and obtained advanced degrees. Brown and McLaughlin had children and continued their work and education while raising their children.

Although only Brown was from a politically active family, all three women report being influenced by, and participating in, the consciousness-raising and political activism (civil rights, anti-war and feminist) of the 1960s – 1970s. Each reported developing "gender-consciousness" as a basis to their respective commitments to bring about change in society and its institutions. Brown noted the interconnectedness of all forms of oppression, and Campbell held that the women's reality should be included in the development of policies and institutions. Each woman held that power needed to be used to bring about equality and held that the aims and methods of power need to be revolutionalized. This power is not egoistic but social in its goals.

Finally, Brown, Campbell and McLaughlin were part of political times characterized by challenge to prevailing institutions, and change as the institutions of racism, sexism, militarism and environmental destruction were subject to widespread citizen protest. Feminists redefined rape and wife battering; called for economic equality and reproductive choice for women; and gave voice to women's history, philosophy and art. In 1982, women's full equality as citizens was enshrined in the Canadian Charter of Rights and Freedoms and, in 1988, women's right to reproductive choice was upheld by the Supreme Court of Canada. At the academic and public level, discourse increasingly shifted to "gender neutral" language.

The examination of the lives of Brown, Campbell and McLaughlin demonstrates how our understanding of ourselves and our possibilities is shaped by both personal and social factors and occurs in a political context that optimizes or limits our action. Changes in education are required so that women's history, experiences and contributions are subjects for study. In addition, different ways of knowing and determining justice need to be ivestigated. In the past, knowledge and justice have been "man" made. In the future, integration of women into all social institutions is required if knowledge and justice are to reflect all human needs and possibilities.

In this final case study, the lives of three political women of this century were examined to look for commonality of experience and challenge to patriarchal structures and belief systems. These women overcame external and internal images of woman as "inferior" and unfit for "public" life and office. They were able to name, represent and oppose women's oppression in a patriarchal society, as it occurred in both the public or economic domain and in the private or domestic domain. As women, they offered images and models of caring and cooperation, that counter a male ontology of human nature as atomistic and egoistic, and aggressive and self-serving. Each saw power to be used to bring about greater equality and recognition of women's lives and relationships of care. Thus arises the possibility of an epistemology that recognizes context and relationships of care as necessary components of "knowledge," and that "reason" must be informed by intuition and empathy, and by experience and practice, if it is to truly represent all that is "known." The participation of these three women in the political sphere paralleled similar advances by women in feminist psychological, epistemological and legal theorizing and practice, and in the elaboration of women's history and oppression. The influence of these women and other feminist women on the construction of a "just" society and justice is unmistakable. Women's groups demanded that all the rights of citizenship, and claims before and under the law, should apply to both male and female persons. Thus, Supreme Court Justice Bertha Wilson, in writing the majority decision in R. v. Morgentaler (1988), held that to deny reproductive choice is "… denying freedom of conscience to some, treating them as means to an end, and depriving them of their 'essential humanity'"(p. 37). More recently, the trend away from distributive and retributive to restorative justice may mark recognition that the need for relationship and connection is a primary human need.

Conclusions and Implications

The three case studies presented have situated Canadian women's struggles for equality and justice in the context of twentieth century political and philosophical constructs. Challenges to the philosophy of the Enlightenment have been offered by philosophers, psycholinguists and psychologists, who have elaborated and challenged the social construction of knowledge and scientific method. Writers of colonization experiences and feminists articulate the hegemony of dominant groups in a society and in intellectual traditions and discourses. These latter writers, as well as post-modern philosophers, challenge the legitimacy of the human "reality," knowledge and social relations constructed historically by the dominant groups in a given society. These case studies, in detailing women's struggles, highlight the conscious and unconscious barriers to recognition of their political and social claims.

Women's struggle for equality and freedom is founded in the recognition that they live in a patriarchal society that has historically marginalized them into the "private" domain, defined them as inferior in their moral and legal capacities, and denied their contributions to the continuation of human society, including their suffering, their interests and aspirations, and their rights as persons and as citizens. Their lives have been held in silence and their words silenced. They have been "educated" and enculturated to believe that this inferior status is their "rightful" place. Many, perhaps most, have internalized the patriarchal view of themselves as women and as citizens, and, thus, have accepted the limitations imposed on women and have been plagued by self-hatred. Thus the social structures, beliefs and values inherent in patriarchy have become psychological and may seem immutable and just (Vygotsky, 1962).

Nevertheless, feminist women, through naming women's oppression as oppression, make it visible and confront their historical circumstances as a product of human action and volition and thus subject to change and transformation through human action.

Central to the processes of change, as Friere (1970) noted, is education. Education, rather than authoritatively transmitting knowledge and the processes of knowing, must encourage the process of interrogation of what is known, including the perspectives embedded in knowledge, and an exploration of how it is known.

Such an education requires that knowledge and the processes of knowing and valuing, including justice, be presented as human constructions and activities founded in historical context. This does not imply that "reality" is only the construction of what is real, but recommends interrogation of the data and experience as well as of the meaning ascribed to it. Such an education requires that educators understand that:

> There is no such thing as a neutral educational process. Education either functions as an instrument which is used to facilitate the integration of the younger generation into the logic of the present system and bring about conformity to it, or it becomes "the practice of freedom," the means by which men and women deal critically and creatively with reality and discover how to participate in the transformation of their world. (Shault in Friere, 1970, p. 15)

Greene (1988) discusses education for freedom, education that develops critical awareness and imagination, the ability to "envisage things as if they could be otherwise, or of positing alternatives to mere passivity.... the ability to make present what is absent, to summon up a condition that is not yet" (p. 16). Such an education requires that we reflect upon "cultures of silence," -- the experiences of those who have been excluded from history, -- and make explicit the connections between varying events, past and present, to recognize the role of "perspective" and vantage point and to acknowledge there are always a multiplicity of perspectives (Greene 1988).

Educators, therefore, must challenge silence and exclusion. In the context of women's struggle, it is noted that history, science and theories have been "womanless." Spender (1983) states, "I followed women's silence in the encoded knowledge of our society" (p. 2), and Jamieson (1995) recounts how historians have "chronicled the lifes and times of our forefathers" (p. 191). Our foremothers, until recently, were excluded. Jamieson (1995) further notes that when two-time Nobel Prize winner Madame Curie died, she could not be buried in the "hallowed" resting place of other (male) French "luminaries."

Canadian history must, therefore, include women's struggle for the vote and status of personhood as well as men's struggle for representative democracy. Study of colonization, oppression and war must include women's as well as men's activities, suffering and sacrifices. Educators must enter into dialogue with students about the traditional exclusion of the experiences of "subordinate" groups, including women, and formulate theories, "knowledge," and language that are more inclusive. The ideology and discourse of oppression, including images of the oppressed and justification for the oppression, must be questioned. In each of the case studies presented, women were oppressed by stereotypical images arising out of a patriarchal consciousness that were perpetuated by educators and social and political actors. Such stereotypes and images, implicit in much of our language and theorizing, need to be made explicit, and challenged. Such an education makes hegemony, that is "direction by moral and intellectual persuasion" (Greene, 1988, p. 133), a matter of concern and "critiques must be developed that uncover what masquerade(s) as neutral frameworks" (p. 134). Only then can there be real possibility and freedom.

Educators need to see the full human potential in girls (as well as boys) and encourage them to follow their interests and their aspirations unfettered by traditional stereotypes of their abilities and "rightful" place. Women's achievements in politics, in science, and in the arts should be included in the curriculum. Girls, young women and adult women need support and mentoring as they enter traditionally male domains of human activity and transform them, including science and politics. Value must also be bestowed on traditionally "female" activity including the nurturing and sustaining of human life.

Education for human life should focus not only on rights but on responsibility, on co-operation as well as competition, on community and relationships as well as self-sufficiency and autonomy, on context and connection as well as objectivity and separation and on intuition as well as logical rationality. Such an education would recognize the complexity of human life, human relationships and society.

The implications for psychological theorizing, education and practice, include a challenge to present-day male-centered patriarchal theories of human nature, human development, psychopathology and therapy. Gilligan (1982) states, "Only when life-cycle theorists divide their attention and begin to live with women as they have lived with men will their vision encompass the experiences of both sexes and their theories become correspondingly more fertile" (p. 23). Such theorizing would challenge the Enlightenment construction of "men" as atomistic and egoistic individual actors competing for scarce resources and rights and provide, instead, a relational ontology (Benjamin, 1988). Such an ontology would provide an understanding of individual development and autonomy in the context of caring and nurturing relationships, an embodied autonomy and intersubjectivity. It would also provide for an understanding of power and of gender relationships and would include elaboration of the experiences of individuals and groups of individuals in terms of their specificity and commonality. Domination-subordination would be understood in terms of gender, class, race and other categories of marginalization, as it applies to one individual as an individual or as member of a group of individuals or of groups of individuals, both as it is theorized and lived.

Psychopathology is defined in traditional male-centered theories as one of individual pathology, and is decontextualized from the circumstances and aspirations of one's life. As Greenspan (1983) notes: " … the traditionalists and humanists (each in different was) deny the impact of social reality, while the behaviorists deny the impact of consciousness" (p. 12), and at some level end up "blaming the victim;" thus "women's greater need for psychological help has generally been attributed by counsellors to some inherent weakness in their physical or psychological makeup" (Russell, 1984, p. 5). Like so many social activities, theories of psychopathology are constructed by men, "traditional theories, therefore, and the resulting counselling techniques and skills, have consistently tended to diminish the value and reality of women's perspective on the social order" (Russell, 1984, p. 5). Further, sex roles may be constructed as biologically determined and/or may be deemed to be the cause of individual "deficiency" or "psychopathology," and may blind the therapist to the overall economic, social and political oppression of women (and men marginalized by reasons of race, class and other categories of marginalization). The realities of sexual and physical abuse, and of economic, social and political violence, are made invisible by theoreticians who characterize pathology as individual in origin. Similarily, therapists who promote individual freedom "to become" whatever one desires, and construct all failure and/or distress as individual rather than systemic in origin fail to recognize the impact of social forces.

> The impotence of the oppressed individual totally to alter the painful aspects of her existence by herself is not only ignored but perpetuated by an ideology that urges people to reject any forms of collective responsibility for one another's pain and to embrace

> instead absolute individual responsibility for one's own life.
> (Greenspan, 1983, p.129)

This is not to deny that some forms of "psychopathology" are genetic or a matter of brain chemistry or neurophysiology. Increasingly, however, the impact of early and/or ongoing trauma on neurophysiological development and psychological and physical health is being examined (Herman, 1992; Van der Kolk, 1996). The case of CFS v. DFG demonstrates the failure of dominant psychological theories of "psycholopathology" to construct a theory of pathology or psychological distress that takes into account historical, social and personal context and relationships, and the "survival" strategies developed to endure conditions of oppression and violence.

Feminist therapy and counselling theory construct psychological distress and psychopathology as reflecting both internal and external influences. Therapy, therefore, involves the naming and validating of women's experiences, including experiences of violence, abuse and sexism, of economic and social disadvantage and of restricted choices. "What is required is a counselling approach based on a conscious and continual examination and elimination of sexist biases, conscious and continual re-examination of the value of female roles and functions, and a consideration of individual sexism, social sexism, and the interaction between the two" (Russell, 1984, p. 28). Feminist counselling integrates the personal and the political and addresses issues of power (in the relationship and in society), and facilitates the personal and political empowerment of the client. It also addresses survival strategies, including beliefs and patterns of behaviour that limit or enhance a woman's development and potential. This more holistic approach to therapy and counselling needs to be incorporated into counsellor training programs and the treatment of men as well as women.

In conclusion, these case studies substantiate the feminist claim that the personal is political, and demonstrate that equality, justice and freedom are complex issues. Laws, policies and institutions that appear to enact equality, but which have a disparate impact on women, must be challenged. Public policy and societal institutions and practice must account for women's as well as men's experiences and aspirations. Women's stories give rise to enhanced understanding of what it means to be human and how we create and sustain human societies; therefore women's stories must be told if these changes are to occur.

As women's stories, these case studies, and the consequent recommendations, point to a hopeful, more humane future. In the words of Adrienne Rich (1979):

> I cannot imagine a feminist evolution leading to radical change in the public/private realm of gender that is not rooted in the conviction that all women's lives are important; that the lives of men cannot be understood by burying the lives of women; and that to make visible the full meaning of women's experience, to reinterpret knowledge in terms of that experience, is now the most important task of thinking. (p. 213)

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